# POLITICAL ECONOMY AND CONSTITUTIONAL REFORM

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## HEARINGS

BEFORE THE

## JOINT ECONOMIC COMMITTEE
## CONGRESS OF THE UNITED STATES

NINETY-SEVENTH CONGRESS

SECOND SESSION

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### PART 2

APPENDIX

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# FOREWORD

By Hon. Henry S. Reuss, Chairman

This appendix completes the printed record of hearings conducted by the Joint Economic Committee during November 1982 on the subject of "Political Economy and Constitutional Reform." Much has been written over the years on the flaws in our political system, particularly on the Constitutional separation of powers between executive and legislature that has so often stood in the way of effective government. Many possible changes in our Constitution have been proposed to bridge the gap. The hearings in November brought together more than a dozen academics, journalists, and former Government officials and lawmakers to discuss how we could improve the performance of our political system, and the performance of our economy, by making changes in the structure of our Government and, if necessary, in our Constitution. This appendix complements the hearings by making available in one place a wide variety of other material on these same issues, culled from books, academic and law journals, popular magazines, and other sources. I hope these two volumes will be useful to those who believe that our democracy can be made to work better.

The first part of this appendix looks at the principle of separated powers, delving first into why the Framers chose this form of Government and then into how well it has worked. All would agree that the Framers succeeded in achieving one of their primary purposes in splitting the powers of Government among separate branches—the prevention of tyranny. But, as many of the articles in this section argue, the result has often been ineffective Government, with President and Congress unable to work together and the Government paralyzed from acting in times of crisis. The economic malaise of the past decade is largely attributable to a Government form unable to respond effectively when confronted with difficult choices.

The second part of the appendix outlines ways in which our Constitution might be changed to make our system of Government more effective. Some would have us adopt a full-scale parliamentary system, where the Executive is chosen from and shares power with the legislature. Others would make more limited changes in our form of Government to improve the working relationship between President and Congress without sacrificing the protections against tyranny inherent in our current system. For example, the Constitution could be amended to allow or require the President to choose his Cabinet from among Members of Congress without forcing them to relinquish their seats. Or we could permit Congress to adopt a vote of no confidence in the President, thereby forcing new Presidential and congressional elections if our Government becomes deadlocked or the President loses his ability to lead. This section also looks at recent proposals to let Congress impose restrictions on election financing.

The selections in part III ask whether or not it is politically possible to amend the Constitution, and adopt any of these proposals, without a major crisis of Government to act as catalyst. Their pessimism should serve to keep rooted in reality those contemplating the uphill battle ahead to improve our form of Government.

The final part of the appendix examines the strengths and weaknesses of parliamentary government, particularly in Great Britain. With British reformers arguing that Parliament should adopt portions of our system of government, we must ask whether we should look to parliamentary forms to solve our own problems of Government.

The bicentennial of our Constitution is scarcely 4 years away. We need a thorough and thoughtful reappraisal of our Constitution, particularly those sections which impede decisionmaking by the Congress and the President. Although a small group of Founding Fathers wrote the Constitution in 1787, the review of the Constitution between now and 1987 must be a nationwide undertaking, with results that reflect the deliberations, and command the respect, of all Americans.

The Joint Economic Committee hearings and this appendix are a first step in this review of our Constitution.

During the next few years, a newly formed private group—the Committee on the Constitutional System, under the cochairmanship of Lloyd Cutler and Douglas Dillon—will conduct studies and hold public meetings on how our Constitution might be improved.

The events of the past decade—with Congress and the President at loggerheads over economic policy, and our economy reeling directionless from one crisis to another—suggest that reform of the structure of our Government may be in order.

I wish to thank William R. Buechner, senior economist for the Joint Economic Committee, and Tamara Steere of Amherst College for their assistance in compiling this appendix volume. Lennea Tinker provided invaluable secretarial assistance.

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## I. SEPARATION OF POWERS IN THEORY AND PRACTICE

## The Constitution of the United States of America

*We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*

### ARTICLE I.

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union,

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**[NOTE: This booklet presents the Constitution and all amendments in their original form. Items which have since been amended or superseded, as identified in the footnotes, are bracketed.]**

according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.]* The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand,** but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION 3. The Senate of the United States shall be composed of two Senators from each State, [chosen by the Legislature thereof,]*** for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the

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*Changed by section 2 of the fourteenth amendment.

**Ratio in 1965 was one to over 410,000.

***Changed by section 1 of the seventeenth amendment.

Expiration of the sixth Year, so that one-third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]*

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Place of Chusing Senators.

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*Changed by clause 2 of the seventeenth amendment.

The Congress shall assemble at least once in every Year, and such Meeting shall [be on the first Monday in December,]** unless they shall by Law appoint a different Day.

Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the

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**Changed by section 2 of the twentieth amendment.

Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.*

No Tax or Duty shall be laid on Articles exported from any State.

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* But see the sixteenth amendment.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

## ARTICLE II.

SECTION 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice-President, chosen for the same Term, be elected, as follows.

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; a quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.]*

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

**[In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law, provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.]

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United

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*Superseded by the twelfth amendment.

**This clause has been affected by the twenty-fifth amendment.

States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have Power to Grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

## ARTICLE III.

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

## ARTICLE IV.

SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or

Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.]*

SECTION 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

### ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress: Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the

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*Superseded by the thirteenth amendment.

Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

### ARTICLE VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

### ARTICLE VII.

The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth.

In Witness whereof We have hereunto subscribed our Names.

Go *WASHINGTON*
*Presidt and deputy from Virginia*

*New Hampshire.*

John Langdon
Nicholas Gilman

*Massachusetts.*

Nathaniel Gorham
Rufus King

*New Jersey.*

Wil: Livingston
David Brearley.
Wm Paterson.
Jona: Dayton

*Pennsylvania.*

B Franklin
Robt. Morris
Thos. FitzSimons
James Wilson
Thomas Mifflin
Geo. Clymer
Jared Ingersoll
Gouv Morris

*Delaware.*

Geo: Read
John Dickinson
Jaco: Broom
Gunning Bedford jun
Richard Bassett

*Connecticut.*

Wm Saml Johnson
Roger Sherman

*New York.*

Alexander Hamilton

*Maryland.*

James McHenry
Danl Carrol
Dan: of St Thos Jenifer

*Virginia.*

John Blair
James Madison Jr.

*North Carolina.*

Wm Blount
Hu Williamson
Richd Dobbs Spaight.

*South Carolina.*

J. Rutledge
Charles Pinckney
Charles Cotesworth Pinckney
Pierce Butler

*Georgia.*

WILLIAM FEW
ABR BALDWIN

Attest:

WILLIAM JACKSON, *Secretary.*

## ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.*

*(The first 10 Amendments were ratified December 15, 1791, and form what is known as the "Bill of Rights")*

### AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### AMENDMENT II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

### AMENDMENT III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

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*Amendment XXI was not ratified by state legislatures, but by state conventions summoned by Congress.

### AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall he compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

### AMENDMENT VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any

Court of the United States, than according to the rules of the common law.

### AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

### AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

### AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

### AMENDMENT XI

*(Ratified February 7, 1795)*

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

### AMENDMENT XII

*(Ratified June 15, 1804)*

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—]* The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

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*Superseded by section 3 of the twentieth amendment.

### AMENDMENT XIII

(*Ratified December 6, 1865*)

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

### AMENDMENT XIV

(*Ratified July 9, 1868*)

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

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*Changed by section 1 of the twenty-sixth amendment.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

### AMENDMENT XV

*(Ratified February 3, 1870)*

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude—

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

### AMENDMENT XVI

*(Ratified February 3, 1913)*

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

### AMENDMENT XVII

*(Ratified April 8, 1913)*

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided,* That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

### AMENDMENT XVIII

*(Ratified January 16, 1919)*

[SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

[SECTION 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

[Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.]*

## AMENDMENT XIX

*(Ratified August 18, 1920)*

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

## AMENDMENT XX

*(Ratified January 23, 1933)*

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

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*Repealed by section 1 of the twenty-first amendment.

SECTION 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

SECTION 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

SECTION 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

### AMENDMENT XXI

*(Ratified December 5, 1933)*

SECTION 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

SECTION 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

## AMENDMENT XXII

*(Ratified February 27, 1951)*

SECTION 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

SECTION 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

## AMENDMENT XXIII

*(Ratified March 29, 1961)*

SECTION 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

### AMENDMENT XXIV

*(Ratified January 23, 1964)*

SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

### AMENDMENT XXV

*(Ratified February 10, 1967)*

SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

SECTION 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

SECTION 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

SECTION 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the

President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

### AMENDMENT XXVI

*(Ratified July 1, 1971)*

SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

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## MADISON

### THE SEPARATION OF POWERS: I

*To the People of the State of New York:*

HAVING reviewed the general form of the proposed government and the general mass of power allotted to it, I proceed to examine the particular structure of this government, and the distribution of this mass of power among its constituent parts.

One of the principal objections inculcated by the more respectable adversaries to the Constitution, is its supposed violation of the political maxim, that the legislative, executive, and judiciary departments ought to be separate and distinct. In the structure of the federal government, no regard, it is said, seems to have been paid to this essential precaution in favor of liberty. The several departments of power are distributed and blended in such a manner as at once to destroy all symmetry and beauty of form, and to expose some of the essential parts of the edifice to the danger of being crushed by the disproportionate weight of other parts.

No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty, than that on which the objection is founded. The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. Were the federal Constitution, therefore, really chargeable with the accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system. I persuade myself, however, that it will be made apparent to every one, that the charge cannot be supported, and that the maxim on which it relies has been totally misconceived and misapplied. In order to form correct ideas on this important subject, it will be proper to investigate the sense in which the preservation of liberty requires that the three great departments of power should be separate and distinct.

The oracle who is always consulted and cited on this subject is the celebrated Montesquieu. If he be not the author of this invaluable precept in the science of politics, he has the merit at least of displaying and recommending it most effectually to the attention of mankind. Let us endeavor, in the first place, to ascertain his meaning on this point.

The British Constitution was to Montesquieu what Homer has been to the didactic writers on epic poetry. As the latter have considered the work of the immortal bard as the perfect model from which the principles and rules of the epic art were to be drawn, and by which all similar works were to be judged, so this great political critic appears to have viewed the Constitution of England as the standard, or to use his own expression, as the mirror of political liberty; and to have delivered, in the form of elementary truths, the several characteristic principles of that particular system. That we may be sure, then, not to mistake his meaning in this case, let us recur to the source from which the maxim was drawn.

On the slightest view of the British Constitution, we must perceive that the legislative, executive, and judiciary departments are by no means totally separate and distinct from each other. The executive magistrate forms an integral part of the legislative authority. He alone has the prerogative of making treaties with foreign sovereigns, which, when made, have, under certain limitations, the force of legislative acts. All the members of the judiciary department are appointed by him, can be removed by him on the address of the two Houses of Parliament, and form, when he pleases to consult them, one of his constitutional councils. One branch of the legislative department forms also a great constitutional council to the executive chief, as, on another hand, it is the sole depositary of judicial power in cases of impeachment, and is invested with the supreme appellate jurisdiction in all other cases. The judges, again, are so far connected with the legislative department as often to attend and participate in its deliberations, though not admitted to a legislative vote.

From these facts, by which Montesquieu was guided, it may clearly be inferred that, in saying "There can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates," or, "if the power of judging be not separated from the legislative and executive powers," he did not mean that these departments ought to have no *partial agency* in, or no *control* over, the acts of each other. His meaning, as his own words import, and still more conclusively as illustrated by the example in his eye, can amount to no more than this, that where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted. This would have been the case in the constitution examined by him, if the king, who is the sole executive magistrate, had possessed also the complete legislative power, or the supreme administration of justice; or if the entire legislative body had possessed the supreme judiciary, or the supreme executive authority. This, however is not among the vices of that constitution. The magistrate in whom the whole executive power resides cannot of himself make a law, though he can put a negative on every law; nor administer justice in person, though he has the appointment of those who do administer it. The judges can exercise no executive prerogative, though they are shoots from the executive stock; nor any legislative function, though they may be advised with by the legislative councils. The entire legislature can perform no judiciary act, though by the joint act of two of its branches the judges may be removed from their offices, and though one of its branches is possessed of the judicial power in the last resort. The entire legislature, again, can exercise no executive prerogative, though one of its branches constitutes the supreme executive magistracy, and another, on the impeachment of a third, can try and condemn all the subordinate officers in the executive department.

The reasons on which Montesquieu grounds his maxim are a further demonstration of his meaning. "When the legislative and executive powers are united in the same person or body," says he, "there can be no liberty, because apprehensions may arise lest *the same* monarch or senate should *enact* tyrannical laws to *execute* them in a tyrannical manner." Again: "Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for *the judge* would then be *the legislator*. Were it joined to the executive power, *the judge* might behave with all the violence of *an oppressor*." Some of these reasons are more fully explained in other passages; but briefly stated as they are here, they sufficiently establish the meaning which we have put on this celebrated maxim of this celebrated author.

If we look into the constitutions of the several States, we find that, notwithstanding the emphatical and, in some instances, the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct. New Hampshire, whose constitution was the last formed, seems to have been fully aware of the impossibility and inexpediency of avoiding any mixture whatever of these departments, and has qualified the doctrine by declaring "that the legislative, executive, and judiciary powers ought to be kept as separate from, and independent of, each other *as the nature of a free government will admit; or as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of unity and amity.*" Her constitution accordingly mixes these departments in several respects. The Senate, which is a branch of the legislative department, is also a judicial tribunal for the trial of impeachments. The President, who is the head of the executive department, is the presiding member also of the Senate; and, besides an equal vote in all cases, has a casting vote in case of a tie. The executive head is himself eventually elective every year by the legislative department, and his council is every year chosen by and from the members of the same department. Several of the officers of state are also appointed by the legislature. And the members of the judiciary department are appointed by the executive department.

The constitution of Massachusetts has observed a sufficient though less pointed caution, in expressing this fundamental article of liberty. It declares "that the legislative departments shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them." This declaration corresponds precisely with the doctrine of Montesquieu, as it has been explained, and is not in a single point violated by the plan of the convention. It goes no farther than to prohibit any one of the entire departments from exercising the powers of another department. In the very Constitution to which it is prefixed, a partial mixture of powers has been admitted. The executive magistrate has a qualified negative on the legislative body, and the Senate, which is a part of the legislature, is a court of impeachment for members both of the executive and judiciary departments. The members of the judiciary department, again, are appointable by the executive department, and removable by the same authority on the address of the two legislative branches. Lastly, a number of the officers of government are annually appointed by the legislative department. As the appointment to offices, particularly executive offices, is in its nature an executive function, the compilers of the Constitution have, in this last point at least, violated the rule established by themselves.

I pass over the constitutions of Rhode Island and Connecticut, because they were formed prior to the Revolution, and even before the principle under examination had become an object of political attention.

The constitution of New York contains no declaration on this subject; but appears very clearly to have been framed with an eye to the danger of improperly blending the different departments. It gives, nevertheless, to the executive magistrate, a partial control over the legislative department; and, what is more, gives a like control to the judiciary department; and even blends the executive and judiciary departments in the exercise of this control. In its council of appointment members of the legislative are associated with the executive authority, in the appointment of officers, both executive and judiciary. And its court for the trial of impeachments and correction of errors is to consist of one branch of the legislature and the principal members of the judiciary department.

The constitution of New Jersey has blended the different powers of government more than any of the preceding. The governor, who is the executive magistrate, is appointed by the legislature; is chancellor and ordinary, or surrogate of the State; is a member of the Supreme Court of Appeals, and president, with a casting vote, of one of the legislative branches. The same legislative branch acts again as executive council of the governor, and with him constitutes the Court of Appeals. The members of the judiciary department are appointed by the legislative department, and removable by one branch of it, on the impeachment of the other.

According to the constitution of Pennsylvania, the president, who is the head of the executive department, is annually elected by a vote in which the legislative department predominates. In conjunction with an executive council, he appoints the members of the judiciary department, and forms a court of impeachment for trial of all officers, judiciary as well as executive. The judges of the Supreme Court and justices of the peace seem also to be removable by the legislature; and the executive power of pardoning in certain cases, to be referred to the same department. The members of the executive council are made EX-OFFICIO justices of peace throughout the State.

In Delaware, the chief executive magistrate is annually elected by the legislative department. The speakers of the two legislative branches are vice-presidents in the executive department. The executive chief, with six others, appointed, three by each of the legislative branches, constitutes the Supreme Court of Appeals; he is joined with the legislative department in the appointment of the other judges. Throughout the States, it appears that the members of the legislature may at the same time be justices of the peace; in this State, the members of one branch of it are EX-OFFICIO justices of the peace; as are also the members of the executive council. The principal officers of the executive department are appointed by the legislative; and one branch of the latter forms a court of impeachments. All officers may be removed on address of the legislature.

Maryland has adopted the maxim in the most unqualified terms; declaring that the legislative, executive, and judicial powers of government ought to be forever separate and distinct from each other. Her constitution, notwithstanding, makes the executive magistrate appointable by the legislative department; and the members of the judiciary by the executive department.

The language of Virginia is still more pointed on this subject. Her constitution declares, "that the legislative, executive, and judiciary departments shall be separate and distinct; so that neither exercise the powers properly belonging to the other; nor shall any person exercise the powers of more than one of them at the same time, except that the justices of county courts shall be eligible to either House of Assembly." Yet we find not only this express exception, with respect to the members of the inferior courts, but that the chief magistrate, with his executive council, are appointable by the legislature; that two members of the latter are triennially displaced at the pleasure of the legislature; and that all the principal offices, both executive and judiciary, are filled by the same department. The executive prerogative of pardon, also, is in one case vested in the legislative department.

The constitution of North Carolina, which declares "that the legislative, executive, and supreme judicial powers of government ought to be forever separate and distinct from each other," refers, at the same time, to the legislative department, the appointment not only of the executive chief, but all the principal officers within both that and the judiciary department.

In South Carolina, the constitution makes the executive magistracy eligible by the legislative department. It gives to the latter, also, the appointment of the members of the judiciary department, including even justices of the peace and sheriffs; and the appointment of officers in the executive department, down to captains in the army and navy of the State.

In the constitution of Georgia, where it is declared "that the legislative, executive, and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other," we find that the executive department is to be filled by appointments of the legislature; and the executive prerogative of pardon to be finally exercised by the same authority. Even justices of the peace are to be appointed by the legislature.

In citing these cases, in which the legislative, executive, and judiciary departments have not been kept totally separate and distinct, I wish not to be regarded as an advocate for the particular organizations of the several State governments. I am fully aware that among the many excellent principles which they exemplify, they carry strong marks of the haste, and still stronger of the inexperience, under which they were framed. It is but too obvious that in some instances the fundamental principle under consideration has been violated by too great a mixture, and even an actual consolidation, of the different powers; and that in no instance has a competent provision been made for maintaining in practice the separation delineated on paper. What I have wished to evince is, that the charge brought against the proposed Constitution, of violating the sacred maxim of free government, is warranted neither by the real meaning annexed to that maxim by its author, nor by the sense in which it has hitherto been understood in America. This interesting subject will be resumed in the ensuing paper.

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## NUMBER 48

### 48

### MADISON

### THE SEPARATION OF POWERS: II

*To the People of the State of New York:*

IT WAS shown in the last paper that the political apothegm there examined does not require that the legislative, executive, and judiciary departments should be wholly unconnected with each other. I shall undertake, in the next place, to show that unless these departments be so far connected and blended as to give to each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained.

It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident, that none of them ought to possess, directly or indirectly, an overruling influence over the others, in the administration of their respective powers. It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it. After discriminating, therefore, in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary, the next and most difficult task is to provide some practical security for each, against the invasion of the others. What this security ought to be, is the great problem to be solved.

Will it be sufficient to mark, with precision, the boundaries of these departments, in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power? This is the security which appears to have been principally relied on by the compilers of most of the American constitutions. But experience assures us, that the efficacy of the provision has been greatly overrated; and that some more adequate defence is indispensably necessary for the more feeble, against the more powerful, members of the government. The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex.

The founders of our republics have so much merit for the wisdom which they have displayed, that no task can be less pleasing than that of pointing out the errors into which they have fallen. A respect for truth, however, obliges us to remark, that they seem never for a moment to have turned their eyes from the danger to liberty from the overgrown and all-grasping prerogative of an hereditary magistrate, supported and fortified by an hereditary branch of the legislative authority. They seem never to have recollected the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.

In a government where numerous and extensive prerogatives are placed in the hands of an hereditary monarch, the executive department is very justly regarded as the source of danger, and watched with all the jealousy which a zeal for liberty ought to inspire. In a democracy, where a multitude of people exercise in person the legislative functions, and are continually exposed, by their incapacity for regular deliberation and concerted measures, to the ambitious intrigues of their executive magistrates, tyranny may well be apprehended, on some favorable emergency, to start up in the same quarter. But in a representative republic, where the executive magistracy is carefully limited, both in the extent and the duration of its power; and where the legislative power is exercised by an assembly, which is inspired, by a supposed influence over the people, with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude, yet not so numerous as to be incapable of pursuing the objects of its passions, by means which reason prescribes; it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions.

The legislative department derives a superiority in our governments from other circumstances. Its constitutional powers being at once more extensive, and less susceptible of precise limits, it can, with the greater facility, mask, under complicated and indirect measures, the encroachments which it makes on the coördinate departments. It is not unfrequently a question of real nicety in legislative bodies, whether the operation of a particular measure will, or will not, extend beyond the legislative sphere. On the other side, the executive power being restrained within a narrower compass, and being more simple in its nature, and the judiciary being described by landmarks still less uncertain, projects of usurpation by either of these departments would immediately betray and defeat themselves. Nor is this all: the legislative department alone has access to the pockets of the people, and has in some constitutions full discretion, and in all a prevailing influence, over the pecuniary rewards of those who fill the other departments, a dependence is thus created in the latter, which gives still greater facility to encroachments of the former.

I have appealed to our own experience for the truth of what I advance on this subject. Were it necessary to verify this experience by particular proofs, they might be multiplied without end. I might find a witness in every citizen who has shared in, or been attentive to, the course of public administrations. I might collect vouchers in abundance from the records and archives of every State in the Union. But as a more concise, and at the same time equally satisfactory, evidence, I will refer to the example of two States, attested by two unexceptionable authorities.

The first example is that of Virginia, a State which, as we have seen, has expressly declared in its constitution, that the three great departments ought not to be intermixed. The authority in support of it is Mr. Jefferson, who, besides his other advantages for remarking the operation of the government, was himself the chief magistrate of it. In order to convey fully the ideas with which his experience had impressed him on this subject, it will be necessary to quote a passage of some length from his very interesting "Notes on the State of Virginia," p. 195. "All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands, is precisely the definition of despotic government. It will be no alleviation, that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it, turn their eyes on the republic of Venice. As little will it avail us, that they are chosen by ourselves. An *elective despotism* was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others. For this reason, that convention which passed the ordinance of government, laid its foundation on this basis, that the legislative, executive, and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. *But no barrier was provided between these several powers.* The judiciary and the executive members were left dependent on the legislative for their subsistence in office, and some of them for their continuance in it. If, therefore, the legislature assumes executive and judiciary powers, no opposition is likely to be made; nor, if made, can be effectual; because in that case they may put their proceedings into the form of acts of Assembly, which will render them obligatory on the other branches. They have accordingly, *in many* instances, *decided rights* which should have been left to *judiciary controversy,* and *the direction of the executive, during the whole time of their session, is becoming habitual and familiar.*"

The other State which I shall take for an example is Pennsylvania; and the other authority, the Council of Censors, which assembled in the years 1783 and 1784. A part of the duty of this body, as marked out by the constitution, was "to inquire whether the constitution had been preserved inviolate in every part; and whether the legislative and executive branches of government had performed their duty as guardians of the people, or assumed to themselves, or exercised, other or greater powers than they are entitled to by the constitution." In the execution of this trust, the council were necessarily led to a comparison of both the legislative and executive proceedings, with the constitutional powers of these departments; and from the facts enumerated, and to the truth of most of which both sides in the council subscribed, it appears that the constitution had been flagrantly violated by the legislature in a variety of important instances.

A great number of laws had been passed, violating, without any apparent necessity, the rule requiring that all bills of a public nature shall be previously printed for the consideration of the people; although this is one of the precautions chiefly relied on by the constitution against improper acts of the legislature.

The constitutional trial by jury had been violated, and powers assumed which had not been delegated by the constitution.

Executive powers had been usurped.

The salaries of the judges, which the constitution expressly requires to be fixed, had been occasionally varied; and cases belonging to the judiciary department frequently drawn within legislative cognizance and determination.

Those who wish to see the several particulars falling under each of these heads, may consult the journals of the council, which are in print. Some of them, it will be found, may be imputable to peculiar circumstances connected with the war; but the greater part of them may be considered as the spontaneous shoots of an ill-constituted government.

It appears, also, that the executive department had not been innocent of frequent breaches of the constitution. There are three observations, however, which ought to be made on this head: *first*, a great proportion of the instances were either immediately produced by the necessities of the war, or recommended by Congress or the commander-in-chief; *secondly*, in most of the other instances, they conformed either to the declared or the known sentiments of the legislative department; *thirdly*, the executive department of Pennsylvania is distinguished from that of the other States by the number of members composing it. In this respect, it has as much affinity to a legislative assembly as to an executive council. And being at once exempt from the restraint of an individual responsibility for the acts of the body, and deriving confidence from mutual example and joint influence, unauthorized measures would, of course, be more freely hazarded, than where the executive department is administered by a single hand, or by a few hands.

The conclusion which I am warranted in drawing from these observations is, that a mere demarcation on parchment of the constitutional limits of the several departments, is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands.

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## NUMBER 51

### 5[1]

### MADISON

### CHECKS AND BALANCES

*To the People of the State of New York:*

To WHAT expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the Constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. Without presuming to undertake a full development of this important idea, I will hazard a few general observations, which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expense would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.

It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defence must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other – that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State.

But it is not possible to give to each department an equal power of self-defence. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative on the legislature appears, at first view, to be the natural defence with which the executive magistrate should be armed. But perhaps it would be neither altogether safe nor alone sufficient. On ordinary occasions it might not be exerted with the requisite firmness, and on extraordinary occasions it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connection between this weaker department and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department?

If the principles on which these observations are founded be just, as I persuade myself they are, and they be applied as a criterion to the several State constitutions, and to the federal Constitution, it will be found that if the latter does not perfectly correspond with them, the former are infinitely less able to bear such a test.

There are, moreover, two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view.

*First.* In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

*Second.* It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority — that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government, since it shows that in exact proportion as the territory of the Union may be formed into more circumscribed Confederacies, or States, oppressive combinations of a majority will be facilitated; the best security, under the republican forms, for the rights of every class of citizens, will be diminished; and consequently the stability and independence of some member of the government, the only other security, must be proportionally increased. Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. It can be little doubted that if the State of Rhode Island was separated from the Confederacy and left to itself, the insecurity of rights under the popular form of government within such narrow limits would be displayed by such reiterated oppressions of factious majorities that some power altogether independent of the people would soon be called for by the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; whilst there being thus less danger to a minor from the will of a major party, there must be less pretext, also, to provide for the security of the former, by introducing into the government a will not dependent on the latter, or, in other words, a will independent of the society itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practical sphere, the more duly capable it will be of self-government. And happily for the *republican cause*, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the *federal principle.*

PUBLIUS

from Can Representative Government Do the Job
by Thomas K. Finletter

## APPENDIX A

# THE DOCTRINE OF THE SEPARATION OF POWERS

*The doctrine as understood by the authors of the Constitution.* An analysis of the United States government is blocked at the outset if we accept the strict interpretation of the doctrine of the separation of powers which is so commonly regarded today as a fundamental rule of our constitutional system. This strict interpretation is, first, that there are three powers of government, the executive, legislative, and judicial, which, with relatively unimportant exceptions, are neatly assigned to three branches, the Executive, Congress and the federal courts. And, second, that unless this complete separation is rigidly maintained the safeguards of individual liberty established by the Constitution will be impaired.

In fact the doctrine of separated powers as incorporated in the Constitution is quite different from the current interpretation of it. The original doctrine was much more flexible and adaptable to the practical needs of government. The principle in which the Philadelphia Convention believed and which it accepted as the basis of the Constitution was that liberty would be endangered if any one of the branches of government were to be wholly dominated by one or both of the others, but that as long as there was substantial independence of each of them, any practical fusion or interconnection which made for good government was permissible.

This principle of the substantial independence of the three branches of government is as valid now as it was in 1787. If our judiciary were not independent we would not have a free state. If the executive branch were under the complete domination of Congress no strong government would be possible. If Congress were subordinated to the Executive we would have an authoritarian government. But this is not to say that we should carry the doctrine of separation to such an extreme that we must have three sovereign branches which will be so independent that they will pull in different directions. The history of the doctrine and of its understanding by the Philadelphia Convention makes it clear that no such extreme principle was intended.

The most powerful philosophic influence on the Convention was Locke, both directly in *The Two Treatises of Government* and indirectly through the later writings of Montesquieu and Blackstone.

*The Two Treatises* were the rationalization after the fact of the Revolution of 1688. Published after the Revolution, they record this victory in philosophic terms. Parliament is supreme. By the social contract the individual gives up his right to execute the law of nature to the organ of the state best adapted for the work, the Legislature. But the social contract calls for a workable system, and Parliament cannot handle all the business of governing. As a practical matter the total power must be divided into three parts: first, the legislative power; second, the executive power of enforcing the laws which the Legislature makes; and third, the "federative" power of war and peace, leagues and alliances and all other foreign relations. The judicial power is not mentioned, but presumably Locke intended it to have the independence guaranteed by the Act of Settlement.

There is no dogma in the *Treatises* about keeping the powers separate. The only firmly stated principle is that Parliament shall not be deprived of its right to deliberate—that is, to have the final word on—taxes and legislation. Indeed two of the three powers, the executive and the federative, are to be combined in one branch for the practical reason that administration will be more effective if they are in the same hand. The executive and the legislative powers, however, should be kept separate, again for practical reasons. The Legislature is in session only for part of the year and the executive and the federative powers need a branch of government which is always on duty. Furthermore, it might be dangerous to let the Legislature enforce its own laws because it might exempt its members from their operation. It is all a practical matter of what works best.

The moderation of the *Treatises* and their concern with practical considerations unfortunately were not maintained by the later philosophers whose interpretations of Locke's doctrine became increasingly rigid and uncompromising. The interpreters of the *Treatises* who misunderstood both the doctrine and the actualities of the British government were more listened to than the source itself. And the more dogmatic the pronouncements became, the better they suited the revolutionary work of the American colonists. The colonists were fighting the Crown and for their pleasure it could not be said too categorically that the Executive was separate and should stay separate—that is, not interfere with the legislatures of the people.

Montesquieu, in his chapter of the *Esprit des Lois,* which purported to be a description of the British government in 1748, when the book was published, put the doctrine so uncompromisingly that it was an excellent slogan: Government is to be divided into three clearly separated legislative, executive, and judicial powers, each balancing and checking the other. The separation of the three powers, that is their assignment to three independent branches of government, must be complete. Specifically, to confer the executive function on a group of men chosen from the legislature would destroy liberty, for then the two powers would be united.[1] Such a system, Montesquieu recognized, would normally create deadlock and inaction, but "the three branches of government would be constrained to work together in harmony by the necessary force of events."[2]

Blackstone also stated dogmatically the principle that there were three powers of government which should be exercised by three entirely independent branches. He left no room for interrelationship of the branches or joint carrying out of any of the powers as they were then defined, in the interest of a workable government. The doctrine of Locke that Parliament should be substantially independent was being converted into the notion that the three branches of government should be isolated from each other. Any function that was regarded as executive must be carried out by the executive branch; any power regarded as legislative must be regarded as the sole property of the Legislature; and likewise for the judicial power.

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[1] "Que s'il n'y avait point de monarque, et que la puissance exécutrice fut confiée a un certain nombre de personnes tirées du corps legislatif, il n'y auroit plus de liberté, parce que les deux puissances seroient unies." *Esprit des Lois*, XI, vi.

[2] "Comme, par le mouvement nécessaire des choses, elles sont contraintes d'aller, elles seront forcées d'aller de concert." *Esprit des Lois*, XI, vi.

This rigidity was of course impractical. For the work of the Legislature and the Executive could not be so neatly divided. The process of making a law or creating a policy by executive act involved then as it does now the action of both the Legislature and the Executive. These two branches of government could not act in isolated compartments if the work of the State was to be done.

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In England the doctrine was confined to the books of the publicists and was ignored in the practical workings of government. In America it got into the colonial statute books and the state constitutions. Locke helped in drafting the Constitution of North Carolina in 1669, which separated the duties of the Governor and Councillors from those of the Parliament. Early in 1776 the town meeting in Boston announced that the executive, legislative, and judicial powers of government must be as nearly as possible independent of and separate from each other. In the decade preceding the Philadelphia Convention, constitutions were adopted by Massachusetts, New Hampshire, Kentucky, Virginia, Maryland, Georgia, and North Carolina, which contained specific statements that the three powers must be kept extremely separate. The most definite statement was that of Massachusetts. The first draft of its constitution had been rejected because it had not stated clearly enough that the Executive was to have no part of the legislative power. In the constitution as adopted, the provision drafted by John Adams left no doubt as to what was intended. "In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them;

the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws and not of men."

Locke's statement of Whig dogma that the British Crown should not interfere with the business of Parliament had gone very far indeed. It had developed into the slogan of legislatures against kings generally, of the colonial assemblies against the British governors in particular, and it was now the fundamental law of many of the newly independent colonies. During the period from 1776 to 1787 it was given a new meaning. As a result of the Revolution the state legislatures were rid of the governors and in a reaction against executives in general took over most of the total power of government to themselves. Being deliberative bodies they were not capable of doing executive work, and the legislatures soon came into a disrepute which equaled that of the governors. There was much talk of legislative tyranny and inefficiency. It was said that the legislative department was "everywhere extending the sphere of its activity, and drawing all powers into its impetuous vortex." This tendency of the legislatures to take to themselves all the authority of government was said to be as despised as the domination of a foreign power.

Accordingly, by the time the Constitutional Convention met at Philadelphia there were many who wanted a plague on both the executive and legislative powers. As the Convention assembled it was faced with a considerable body of fundamental state law and of written political opinion which had extended the original theory of Locke into the proposition that the separation of the powers should be complete and that any deviation from that principle made for tyranny. It is in this uncompromising form that the doctrine is often accepted today.

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In the meantime however the cabinet system was developing in England and was about to prove that there could be a great deal of interconnection and blending between the three branches of government without prejudice to the liberties of the people. The orthodox three powers —executive, legislative and judicial—were by no means strictly separated in the cabinet system. And nevertheless the resulting form of government did not destroy the rights of the individual. The cabinet system showed that while the publicists were denouncing what was being done as the essence of tyranny, it was possible to have an interrelationship of the legislative and the executive branches which made for good government without violating the fundamental principle that neither branch should wholly dominate the other. The new Executive, the Cabinet, although chosen from among the Legislature was an independent body separate from the Legislature with a character and functions of its own. The Cabinet was not dominated by the Legislature by reason of the fact that the ministers were chosen from the House of Commons and the House of Lords. Indeed the charge has been made that the system set up a dictatorship by the ministers.[8] But this is not true, for Parliament had the ultimate power, the right to dismiss the Cabinet. And the fact that the new Executive was chosen from the Legislature made for a close connection between the two branches which did away with the hostility which had marked the previous relationship of Crown and Parliament.

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[8] Ramsay Muir, *How Britain is Governed.*

There was no thorough understanding of the British development in either England or America at the time of the Philadelphia Convention. The few references to the subject in the debates at Philadelphia emphasized the control of Parliament by the King through his "friends," and the ministers were regarded as being dominated by the Crown. *The Federalist* considered the King as "the magistrate in whom the whole executive power resides." But nevertheless the Convention rejected the extreme notion that the branches of government should be completely isolated. On the contrary the Convention accepted the principle, of which the growing cabinet system was an example, that a great deal of interconnection and blending of the functions of government was permissible so long as no one of the branches exercising them was wholly subordinated to either of the others.

5 The Convention was dominated by practical men, and the same consideration which had influenced the growth of the cabinet system—the willingness to use any practical method of creating good government—led the leaders of the Convention to disregard the rigid abstractions of the philosophers and to divide the total power of government and to interrelate the three branches in any way which served their purpose best. No provision like those of the state constitutions stating in terms the principle of the separation of powers was incorporated in the Constitution. Indeed, as we have seen, the delegates at Philadelphia were willing to accept one of the procedures which Montesquieu had expressly condemned; for they voted four times

in favor of the election of the Chief Executive by the national legislature.

Madison made this very clear.[4] It is true, he said, that "the accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed or elected, may justly be pronounced the very definition of tyranny." But he pointed out that Montesquieu, "the oracle who is always consulted and cited on this subject" could not have meant that the powers were to be wholly separated and distinct. The British Constitution which Montesquieu was describing did not provide for such complete isolation of the several powers; on the contrary, there was considerable blending of functions in that system. What Montesquieu meant when he said that "there can be no liberty where the executive and legislative powers are united in the same person" or if "the power of judging be not separated from the legislative and executive powers" could amount "to no more than this, that where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamentals of a free constitution are subverted." (5)

Moreover, Madison said, if we look at the constitutions of the states in 1787, we find that "notwithstanding the emphatical and, in some instances, the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct." Even in Massachusetts where John Adams' uncompromising doctrine was a part of the state constitution, the Executive had the veto, the Senate was a court of impeachment, the judiciary was appointed by the Executive and was removable by the Legislature, and many officials of the government were appointed by the Legislature. More advanced yet as a departure from the doctrine of strict separation, in New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North and South Carolina, and Georgia the chief executive was elected by the Legislature.

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[4] *Federalist*, XLVII.

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The authors of the Constitution thus cleared away the confusion that had distorted the theories of Locke into an unworkably rigid principle. They defined and arranged the powers of government in the way best calculated to achieve the ends they had in mind, whether or not their arrangement kept the three main powers in entirely separate hands.

In framing the Constitution, its authors had two main objectives. The first was the preservation of the political freedom of the individual, that is the rights of self-rule, freedom of speech, of worship and association, and the other specific guaranties which were finally set out in the Bill of Rights of the first ten amendments to the Constitution. The second objective was to have a government appropriate for the needs of the American state of the time.

The means of assuring the first objective—political freedom—was the principle of the substantial independence of the three branches of government. And since the present day objectives of the American state still include political liberty, this principle is still valid. It is a fundamental doctrine of our form of government and is not to be tampered with in any proposal for change in our governing procedures.

The second objective—to have a government appropriate for the needs of the American state of the time—was stated by Hamilton in the following terms: "The *means* ought to be proportioned to the *end;* the persons, from whose agency the attainment of any *end* is expected, ought to possess the *means* by which it is to be attained."[5]

Hamilton recognized that the defense of the Union required a strong government, for "it is impossible to foresee or define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them." The Constitution therefore gave the President an authority in foreign affairs which, except for the right of Congress to declare war and to deliberate on treaties, was as broad as the British Executive's great prerogative in such matters. In domestic matters, however, the authors of the Constitution believed that the needs of the time did not require much power in the federal government. Its domestic powers were therefore strictly enumerated and restricted. The great residual authority on these matters was expressly reserved to the states or the people.

This second objective—to have a government appropriate for the needs of the time—has of course been greatly changed since 1787. The substance and arrangement of the powers of government which were proper for this purpose at the time of the Philadelphia Convention are obviously not adequate for present-day needs. It is not only permissible but necessary to tamper with the procedures which were intended to create the relatively weak government of 1787. Indeed, there is the danger that if these procedures are not brought into relationship with the present aims of the American State, the first objective of the Philadelphia Convention, political freedom, may be destroyed. Then the danger was that ambitious men would enslave the people by their vigor. Now the danger is that inaction or ineffectiveness may destroy self-rule and that impatient needs will force the concentration of the three powers of government in one hand.

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[5] Hamilton, *Federalist* XXIII.

Any proposal for a change in the federal government which is appropriate to the present objectives of the American state and does not destroy the objective of political liberty by subordinating wholly one of the branches of government to the others is therefore well within the limits of the doctrine of the separation of powers as it was understood by the authors of the Constitution.

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*A description of the modern powers of government.* It remains to point out that the classical definition of the three powers of government as executive, legislative and judicial is no longer adequate and is positively misleading. The terms executive, legislative and judicial are correct descriptions of the *branches* of government but not of its modern-day powers.

The powers of government of course do not remain fixed. They vary constantly in their content and in the way in which they are assigned to and interrelated between the branches of government, all in accordance with the kind of governing which is needed for the purposes of the time. In a primitive society all power is in the head of the State and a small group surrounding him. As a nation matures politically the people demand more voice in the government and some of the total power is taken away from the chief and is put in other hands. The deliberative function usually breaks off first when the people or some powerful group among them refuse to permit the chief to exercise the total authority of the State and insist on having a veto on the major policies he proposes. The judicial power stays as part of the kingly power until a later stage when some abuse creates the demand that it be set up in a separate branch free from domination by any other part of the State.

As a nation matures, the functions of government become more complex. The people insist on an increasingly greater part in the governing process. Legislation progresses beyond the stage of being merely a demand that certain grievances be remedied as a condition to the granting of supplies to the king. It eventually concerns itself with all the important interests of the nation. The process of making the laws becomes refined and is divided into several parts which are assigned to different branches for performance. The work of administering the laws also becomes complicated and new types of governmental units are created for the purpose. And as the problems of the State become more intricate the work of judging becomes too much for the traditional law and equity courts. It also is subdivided and scattered among the regular courts, new administrative agencies with specialized areas of responsibility, and officials of the executive branch.

Governmental power in a maturing nation thus tends to be centrifugal. And if the scattered and refined functions of governing are not bound together by principles and procedures which keep the whole operation coherent, there is the danger that the government will become incompetent and futile. The refinement may be too great for the political maturity of the people, especially if the forms are not indigenous but are borrowed or imposed from the outside. The scattered powers will then take a reactionary course and will be reassembled into a lesser number of units of administration.

A tendency towards reconcentration of the powers of government in the Executive usually brings with it the use of the armed forces to enforce political decisions. As long as the armed forces are kept out of the political scene, and the Legislature otherwise keeps independent of executive domination, the centralizing tendency is kept within proper limits. But if the Legislature has to yield to force or to a public opinion demanding increased authority in the Executive, the reaction may go all the way back to the primitive condition where the total power of the State was centralized in the hands of a chief or leader and a small group around him. Anson's description of the authority of the Norman king is equally applicable to the modern dictator. "He led his people in war, administered their affairs in peace, was their judge in the last resort."

The moving picture of the division and reassembly of governmental powers thus portrays a shifting scene, and no description of the grouping of the functions of government will have other than a passing validity.

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(L We may, I think, describe the successors to the old executive and legislative powers in our modern representative government in the following terms.

First, as a positive element, the power of originating the legislative program. Second, another positive, the power of party solidarity which provides the sanction to persuade the Legislature to accept the policies of the originators. Third, again positive, the power to make policy through purely executive operations. These three powers make up the affirmative side of government and on their development and concentration will depend the aggregate strength of the federal government.

Then, fourth, the deliberative power whereby Congress provides debate on and decides whether it will or will not enact the legislation, treaties, and tax bills which are submitted to it. This power provides the check on the positive elements and guarantees the self-rule of the people. Without a sufficiently strong deliberative power the positive elements would create an authoritarian rule.

The objective should be to strengthen the three positive powers and to concentrate them in the hands of the Executive; but to do so in such a way as not to impair the deliberative power of Congress. But an examination of these four powers as they exist today in the United States will show that they are not either properly developed or correctly concentrated in the branches of the government. The positive powers are still immature. And the deliberative power has reached a point where unless it is radically improved, it and Congress with it will become discredited.

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*The originating power.* By origination I do not refer to the original source of the policy contained in a bill, for the first suggestion may come from individuals or groups in or out of Congress who have no control over the governmental action which will make it into law. Origination is the act of deciding what bills are to be presented to the Legislature for its consideration.

In the earlier simple governments the origination of legislation and taxation was sporadic. When the Executive needed money he was compelled to remedy the grievances which the Legislature complained of as a condition to the grant of the funds. In a *laissez-faire* state, legislation and taxation were limited and occasional. But as the business of government grew more positive and complicated a coherent program shaped by consistent policies became necessary. Some branch of government had to assume the responsibility of planning the programs which were to be submitted to the Legislature.

In the United States this function of origination is scattered among the Executive and individuals and groups in Congress acting on their own or on the inspiration of outside organized groups. There are no rules or customs which in practice prevent the members of either House from originating legislation. Nor is there any practice which gives the administration the power to block a bill, financial or otherwise, of which it does not approve. As a result the total program is less coherent than it should be. And above all the influence of the organized groups is too strong.

During the periods of power of the strong Presidencies, the administration by its energy arrogates to itself the right to propose the legislative program. As the control of the President weakens with the time cycle, origination again scatters. The organized groups reassume their power. And Congress, by establishing bodies such as the joint committee of the two Houses on taxation and a great number of other special committees on particular subjects, acquires the necessary technical information to enable it to draft important bills of its own.

But in general the better organization of the executive departments and agencies gives them the advantage in this matter of originating. A legislature is not designed to originate in an orderly fashion and cannot do so unless it creates a small body especially for that purpose. And if such a body were created by our Congress and did assume the responsibility of formulating the legislative program, it would soon tend to separate from the Legislature and become a separate branch of government. In the absence of such a body in our system and with the growing complexity of the matters to be dealt with, the preparation of the legislative program tends to fall into the hands of the executive branch. It is important that this tendency be encouraged and that the originating power, as well as the other positive elements of government, be centered in and regarded as the special function of the Executive.

In Great Britain the originating power is concentrated in one body, the Cabinet. It has been officially recognized as a separate function. The Report of the Machinery of Government Committee of 1918 lists the responsibilities of the Cabinet as "a) the final determination of the policy to be submitted to Parliament; b) the supreme control of the national executive in accordance with the policy prescribed by Parliament; and c) the continuous co-ordination and delimitation of the authorities of the several departments of State." Private members may present bills either on their own initiative or at the suggestion of outside organized groups. But the private bill will have no chance if the Cabinet, with its control over the majority of the House, wishes to stop it.

In Great Britain the private members and the organized groups are in an even worse position with respect to legislation which requires a grant of public funds or taxation. By Standing Orders such bills must be accompanied by a recommendation from the Crown and therefore in practice may be proposed only by ministers or must be supported at a later stage by the Cabinet. "If interests want to dig their hands into the national money-bag they must persuade the Treasury to hold the mouth open. Where logrolling takes place the Chancellor of the Exchequer captains the team. The pork-barrel is kept locked up in 11 Downing Street, and those who want to take part in the distribution must stand on the door-step and prove their credentials. Or, to leave metaphors, private interests must prove that the use of public funds for their benefit is also for the national benefit. . . . In the last resort the responsibility for all legislation, especially financial legislation, rests with the Government; and there is no financial legislation except Government legislation."[6]

*The power of party solidarity*. The power of our Executive to originate the legislative program is of no value if the program will not be accepted by Congress. And unless the Executive can direct the course of legislative policy strong government is impossible.

In the modern democracies, including the United States, the power of party solidarity is the device which induces the legislatures to agree to the legislative program originated by the Executive. By holding party lines together through the force of party discipline, an Executive of the same party as the majority in the Legislature is assured of the acceptance of its policies. The solidarity of the minority party also is important. When it is highly developed the policies of the majority are well debated for the benefit of the people, and the democratic principle of opposition is maintained. In direct proportion to the extent that the power of party solidarity is strong, the legislative program is coherent and the opposition responsible.

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[6] W. Ivor Jennings, *Parliament* (1939).

The importance of the power of party solidarity cannot be exaggerated. It is the device which democracy has invented to convert representative government from a negative force to an affirmative one. Without it government will remain in the old condition of struggle between the Executive and the Legislature. With it the two branches can work together, each in its own function, to solve the apparently insoluble problem of having strength in the Executive without sacrificing the ultimate and indispensable authority of the Legislature.

The alternative to party solidarity in the Legislature is rule by the organized groups. They have their own discipline which will prevail by pressure on members of the Legislature unless a greater discipline by the national parties can make the public interest prevail over the local interests of the groups.

Party solidarity is not as developed in the United States as it should be because of the lack of the right of the Executive to dissolve the Legislature. The power of party solidarity does however exist in the United States. The President is the head of his national party. The prestige of his office enables him to bring pressure in aid of his measures by the use of patronage and by appeals directly to the people over the head of Congress. During the early time of his administration the President's power of party solidarity is strong. But it is irregular. And until it becomes more highly developed our government will lack a necessary element of a strong State.

*Executive policy-making* is the third and last of the positive powers. As we have seen, this authority which the President has under Article II of the Constitution and through broad delegations contained in acts of Congress constitutes a great policy-making power. If this power were combined in the hands of the Executive with the right to originate the legislative program and a strengthened power of party solidarity, a very strong government would result. But if such a government were not properly checked by the people through their representatives in the Legislature, it would be authoritarian. It is the responsibility of the deliberative power exercised by Congress to provide this check.

*The deliberative power.* In political history the deliberative power of the representative bodies has varied greatly. In early assemblies it consisted of listening to requests of the Crown for money and of establishing conditions to the grant. The representatives of the people bought parts of the royal prerogative. The conditions so enforced were laws and the act of insisting on them was origination. The deliberation consisted of granting the funds requested by the Crown and of enacting the laws which had been originated by the members of the representative body itself.

In the transition state, the conditional nature of origination disappears. The originating power and the power of party solidarity are not yet mature. The former is scattered and the latter weak. The deliberative function becomes subject to pressures, either from the Crown or from powerful individuals or groups representing local or other limited interests.

If the originating power and the power of party solidarity become strong, as has been the case in many of the parliamentary governments, the deliberative function is compelled to develop along with them in order not to be submerged. The growth of the originating and party solidarity powers and their concentration in the hands of the executive branch (which already possesses the executive policy-making power) is a threat to the liberties of the people. The Legislature must therefore shape its deliberative function so that it is capable of resisting usurpation by this newly powerful executive.

A legislature cannot protect its position merely by blocking the Executive's proposals. Such a destructive course would not be approved by public opinion. The Legislature therefore must allow the Executive a great measure of authority and must then, first, set up methods of debate which will expose to the public what the Executive is doing and, second, establish ways of checking the Executive which will commend themselves to the people. For the deliberative power has two objectives: to force the Executive to conduct its operations in the full light of public knowledge and opinion, and to stop the Executive from carrying out policies which the Legislature believes contrary to the wishes or interests of the people.

A legislature cannot do either of these things properly unless it has the right to dismiss the Executive from office or, what amounts to the same thing, to block effectively the legislative programs of the Executive and in this way to force it to resign.

In the United States the originating and party solidarity powers are growing stronger. Congress is aware of this growth and very properly wants to take measures to prevent these powers from getting out of hand. It has however no right to dismiss the Executive in our system. It cannot practically assert its power by blocking everything the Executive proposes. The power of impeachment is of no value at all because it is too severe. The right of the Senate to pass on important executive appointments is of little consequence, and there is no right of Congress to remove members of the executive branch. And the control by Congress of the great policies which are made by purely executive action is inadequate.

Congress therefore is compelled to block the Executive when it can, opportunistically. It yields with the blow of the strong periods of presidential power but resiliently returns to take advantage of the weak phases of the cycle of presidential authority to reassert its position.

I have pointed out in the text the danger of continuing this system of nagging checks. I have also tried to point out that the solution is to substitute one big check for the multiple, nagging checks—that is, to give to Congress as part of its deliberative power the right to force the Executive to call a dissolution. Inevitably the positive elements in our government will become stronger. The powers of origination, party solidarity and executive policy-making will become stronger and more centralized in the executive branch. The combination of these positive powers in the Executive will make it necessary for Congress to strengthen its deliberative action in order not to be submerged. If representative government is to be safeguarded, it is urgent to devise some system whereby Congress can feel secure in allowing the three positive powers of our government to grow strong. It can have this sense only if it has the right to force the Executive to go to the people for a decision as to how the government is to be run.

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# THE CHOICE OF THE FRAMERS*

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## Introduction

After Chief Justice Burger had sworn in President Ford he is reported to have said to him: "The system worked." We must, however, distinguish between two systems, the representative republic which did work, and the system of divided powers which made Watergate and other failures of our "living Constitution" possible. The first major ingredient of the representative republic is the representative principle which entrusts the government to "a small number of citizens elected by the rest" and thereby excludes that kind of mob psychology which was the bane of ancient and medieval republics. Furthermore, elections held according to the majority system enable the majority to defeat it (a "faction's") sinister views by regular vote, provided, of course, that it is a minority. This has, more often than not, been the case even on the local level and always on the national level. A "faction" thus defeated "may clog the administration; it may convulse the society but it will be unable to execute and mask its violence under the forms of the Constitution."

These features of our representative republic sufficed to enable it to weather the storms of the world economic crisis, and canalized the radical currents engendered by the racial crisis, the Vietnam war and Watergate.

The particular type of separated powers enshrined in the Constitution is, however, a source of ever-recurring and nowadays increasing concern. Its critics term it a weakness. How was this unique system arrived at?

## 1. The logic of experience and the logic of speculation.

The two American political principles and systems differ widely, not only in regard to content, but also in regard to the method by which they were constructed. With respect to the first, the republican principle of representation, the Framers were imbued with the spirit which caused John Dickinson[1] to say during the Convention: "Experience must be our guide. Reason may mislead us. It was not reason that discovered the singular and admirable mechanism of the English Constitution."

The reference to the English Constitution makes it clear that Dickinson was not protesting against reason but against speculation. Utopian writers have, since the beginning of recorded history, been busy drawing up ideal social and political structures. They paid little attention to the material which human nature placed at their disposal and with which everyone has to build. Roger Bacon, a typical Englishman, said: "Naturam non vinces visi parendo"—"You will not vanquish nature unless you obey it." When the Framers constructed their highly successful Federal Union they did accept human material as they found it; they carefully heeded the voice of experience as it had resounded over the centuries. True reason was given its due in selecting the facts to be considered and in ascertaining the lessons to be drawn, but speculation was carefully avoided.

When, however, the Framers came to the structure of the new republican government (in particular to the relations between the executive, the legislature and the judiciary) the voice of experience was muted. The nature of the admired British government had not yet been finally determined; worse, the aspect under which it could have provided truly pertinent lessons was obscured by false perceptions.

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* *Editor's Note* This article is based upon a chapter from the author's forthcoming book on *America's Two Political Systems.*

### 2. The alternative rejected.

British cabinet government, so different from mere royal government, had begun to emerge shortly after the Glorious Revolution. The King had lost his right to create new parliamentary seats and thereby create majorities to his liking, and his financial resources were subject to stricter parliamentary control. Therefore, the Earl of Sunderland suggested to the King that he take all of his ministers from the majority; he would then have a homogeneous team capable of securing parliamentary consent to his proposals. The King agreed, although the result was not fully activated until 1695. No one was aware that this was the beginning of the end for a truly royal executive. A homogeneous group of ministers, sure of its parliamentary backing, was bound to develop its own views and be tempted to pursue them, if necessary, against the King, even if the final shape of the new relationship was slow in developing and slower yet in being understood.[2]

If the King did not know what he was doing, neither did Parliament. Deeply suspicious of the King's motives it passed the Place Bill, excluding from the House of Commons all persons holding offices or receiving pensions from the Crown. The King's failure to give his assent saved the Commons from the consequences of their folly. They came back to do battle again, however. The Act of Settlement, passed in 1700, provided "that so soon as the House of Hanover shall come to the throne, no person who has an office or place of profit under the king, or receives a pension from the crown, shall be capable of serving as a member of the House of Commons."[3] This clause was repeated five years later, before the House of Hanover had come to the throne.

The English, then, created their constitution in the same "fit of absentmindedness" in which they are said to have collected their empire. For the time being only the first of the three principles on which parliamentary government came to rest, that of homogeneity, had made its appearance. It did not establish itself immediately as a definite rule; mixed cabinets returned after a few years. Eventually, however, Sir Robert Walpole (1721–1742) established homogeneity and added solidarity: when ministers failed to act as part of his team they would be replaced, and once a decision had been made all had to abide by it and defend it in public.[4] If they were unwilling to do so, they were free to resign, retaining, of course, all the privileges associated with their membership in Parliament. If they did not leave voluntarily, the Prime Minister would advise the King that they were to be dismissed and, as Sir Harold Wilson[5] informs us, the Prime Minister's advice continues to be taken to this day.

The third principle characteristic of the cabinet system is responsibility to Parliament. Whenever the Prime Minister himself is defeated in an important vote, which he cannot cause to be reversed, he and the entire cabinet resign. If an individual minister is defeated the same applies, although exceptions are possible when the individual minister is deemed to have been out of step with the rest. Sir Robert Walpole was the first one to have to submit to the rule of responsibility. In a tenure of two decades he had aroused considerable resentment. The first motion of censure[6] which had a real chance accused him of practices which are now standard with any prime minister (except that corruption has since been replaced by a type of party discipline which did not then exist). This motion was defeated, but Walpole resigned the following year when new elections had greatly reduced his majority and he lost out on a dispute arising from a contested election. Walpole's entire cabinet did not follow him into retirement; the principle of solidarity had not yet fully established itself.

The gears of constitutional development were temporarily reversed when, in 1760, George III ascended the throne. This reversal was fatal for the perception of the British Constitution by the Framers. George III was the first of the Hanovarian kings to have been born in England, and to speak English as his native language. He ascended the throne as a handsome young man, popular throughout his realm, including the American colonies. He wanted to rule as well as reign. Many of his subjects, fed up with the way in which the Whigs had been running the country in what appeared to be a partisan spirit, agreed with the designs of the "patriot King." The King himself exercised most of the functions which Walpole had wielded as First Lord of the Treasury. He had started out, in the words of an American historian[7] as "a badly frightened post-adolescent with absurd ideas about purifying English society." He had learned a great deal, however, by the time that, on January 19, 1774, the news of Boston's Tea Party reached London. The Prime Minister of the day was Lord North, an amiable gentleman who, like his half-brother, Lord Dartmouth, the Colonial Secretary, was in favor of peace. George III, however, more or less considered Lord North as his errand boy who was merely to hold the various departments in line for the King's policies.[8] The means by which George III secured the approval of his policies by both the cabinet and the House of Commons go far toward explaining the feeling of revulsion which so many Americans had at that time against English government: "With £800,000 a year to spend as he pleased, the King guaranteed North some 200 votes in the House of Commons, a nice foundation on which to build a majority. Bought off, outspent at the polls, the opposition was reduced to a shadow."[9] Lord North himself had to be appealed to on a different level: "It was only the earnest solicitations of the King not to leave his sovereign again at the mercy of the Whigs that induced him to defend a war which from 1779 he knew to be both hopeless and apolitic."[10]

The Americans were to change all of this at Yorktown. The news of Cornwallis' surrender reached London on November 25, 1781, and there was immediate pressure on Lord North to resign. He endeavored to stay, but by the end of March he knew that he had to quit. He found it harder to make up the King's mind than his own, and he considered it necessary to warn his royal master: "The torrent is too strong to be resisted; Your Majesty is well appraised that, in this country, the Prince on the Throne cannot, with prudence, oppose the deliberate resolution of the House of Commons. . . ."[11] The King considered the attitude of Parliament as an affront; he was willing to resign and actually drafted a—rather pathetic—message of abdication.[12] Eventually he yielded, and the Rockingham Ministry was formed. It contained an innovation which constituted a further step down the road to fullfledged cabinet government: For the first time a "mass evacuation of the departments" accompanied the advent of "a new administration, a new team, known by the name of its head." In 1783 the younger Pitt, more acceptable to the King, became Prime Minister, and in the general election of 1784 he established the custom of "appealing to the country," asking the people to give him a majority, which they did.

Clearly, then, the development of a government within which policy is determined by the prime minister and the cabinet, in accordance with the wishes of a parliamentary majority, rather than by the king, made great strides in the 1780's. It is surprising that John Adams, who served as the American Minister to London from 1785 to 1788, failed to see this. In his rather voluminous and influential writings he was somewhat bookish and, as his grandson and editor was to remark, not always too careful.[14] Otherwise he might have provided his countrymen with a perception of British constitutional reality quite different from the one by which most of them were guided in 1787. Even James Wilson, writing shortly after the Constitution had gone into effect, presented a picture of British government which is nothing short of a caricature.[15]

### 3. Tradition, accident and the influence of Montesquieu.

If the Framers had no clear perception of British cabinet government as it was developing at that time neither did the man whom Madison in *The Federalist* No. 47[16] called "the oracle who is always consulted and cited on this subject (the separation of powers), the celebrated Montesquieu.” Madison says about him: “If he be not the author of this invaluable precept in the science of politics, he has the merit at least of displaying and recommending it most effectually to the attention of mankind.” This reference to Montesquieu is so strong that the other factors which, according to some[17] were decisive, need to be discussed but briefly.

Reference is made to historical experience. The colonial period was characterized by the dualism of the appointed governor and the elected legislature, preceding the dualism of the President and the Congress under the Constitution. But, since the essence of the Revolution was discontinuity rather than continuity and all power was henceforth derived from the people, would not institutionalized teamwork between executive and the leaders of the Congress, (the essence of the parliamentary system), have served the country better than the renewed dualism? In this case as in others the problem does not lie in the different answers given to a particular question, but in the fact that the decisive question was not asked.[18]

The argument remains basically the same when reference is made to the new constitutions of Massachusetts and New York, which did influence the deliberations of the Convention. Why did the example of the two states have the result that it did? Part of the answer does seem to lie in the fact that John Adams decisively influenced the writing of the Massachusetts constitution, and his views, apparently, had a considerable impact on John Jay, who guided the deliberations on the New York constitution.[19] Adams was as early cognizant of Montesquieu as any of the Framers. His Diary[20] shows the first reference to *The Spirit of the Laws* during the summer of 1759. On June 26, 1760, Adams notes: “I have begun to read *The Spirit of the Laws*, and have resolved to read that Work thro, in order and with Attention. I have hit upon a project that will secure my attention to it, which is to write on the Margin, a sort of Index to every Paragraph.”[21] Adams, then, made sure that he fully absorbed the thought of Montesquieu, the validity of which he took for granted ever afterward. He influenced his contemporaries in conversations before he began to write about these matters.

Adams first expressed his own views on the structure of republican government in a letter to Richard Henry Lee, dated November 15, 1775, which succinctly summarizes the basic ideas of Montesquieu.[22] He amplified his views in a lengthy letter to George Wythe, who had asked him to put down in writing what he had told him one evening in January 1776. Adams was able to hand the letter to Wythe the next day, a fact which demonstrates both the vast amount of his learning, and a certain tendency to let the speed of his writing outrun his capacity for critical thought.[23] Adams returned to the subject more fully in his *A Defence of the Constitution of Government of the United States of America*. The first of its three volumes was available when the Convention met and was perused with keen attention by its intellectual leaders. That Adam's explicit references to Montesquieu were limited to excerpts[24] (which is also the case in regard to certain other writers) merely means that he fully identified himself with their contents.

The overall conclusion can only be that Adams was, from the outset, a factor to be reckoned with in American political thinking on the various powers of government. His early discussions with Richard Henry Lee and George Wythe must have had their effect on other Virginians who, like Madison, were to shape so much of the new Constitution. His influence on the Convention was such that “Centinel” placed him at the head of those who, in his view, perverted sound political thinking on the Constitution.[25] However, throughout the crucial period beginning in 1776 Adams seems to have limited himself to preaching Montesquieu without ever examining the factual and logical validity of the brilliant Frenchman's views.

Reference must also be made to the part played by accidents in the shaping of the Constitution. The members of the Convention worked under pressure during the hot and humid summer days of 1787; they kept doors and windows closed in order to assure the secrecy of their deliberations. When, at last, the agony preceding the Connecticut compromise was over, they wanted to get done with the rest of their work as quickly as possible. Among the decisions made during this period the one on the election of the executive ranks first in importance. All major proposals submitted in the beginning provided for the election of the executive, whether it was to consist of one or of several persons, by the legislature. The Convention endorsed this mode five times. When, however, the Committee on Detail stated in its report that the President "shall be elected by ballot by the Legislature," it had not specified how this was to be done. If, as proposed by Rutland of South Carolina, the two Houses were to vote jointly, the decision would lie with the large states as they dominated the House. A motion to that effect was voted by seven states to four, and Charles Warren[26] concludes: "The loss of influence of the small States in the Legislative election of the President, thus brought about, probably induced them to regard favorably some other method of election of that official." Actually, the weight of the small states in a presidential election was the same in a choice by electors, as later adopted, and the election in a joint session of House and Senate, but in the rush of events during the final weeks of the Convention such matters could not be carefully scrutinized. The shift from legislative election to what soon became popular election did, however, have a considerable influence on the overall workings of the new government. If space permitted, it could be shown how accidents shaped, or helped to shape, other parts of the Constitution.

It is likely that in regard to both the perception of historical precedent, be it colonial or post-colonial, and to the accidents during the Convention, Montesquieu's handy formulations played their part. They had become firmly rooted in people's minds and were apt to make decisions veer in the direction of what was, or seemed to be, indicated by the French writer's "celebrated maxim."[27] Montesquieu's views, then, acted as a powerful catalyzer, permitting old experiences and old fears to shape much of the new political structure without there being a fully rational examination of the country's needs and the options available for the promotion of its welfare.

### 4. Montesquieu's reasoning.

Montesquieu's own approach to reality had one thing in common with that of John Adams: Both failed to pay attention to the concrete developments in England which took place in their day. For Montesquieu, in Madison's words:[28] "the British Constitution was . . . what Homer had been to the didactic writers on epic poetry . . . This great political critic appears to have viewed the Constitution of England as the standard, or to use his own expression, as the mirror of political liberty . . ." Montesquieu had been looking for a practical model which he might oppose to the absolute government then existing in France. England seemed to fill the bill. He visited that country between 1729 and 1731, when Walpole was establishing the major essentials of parliamentary government. He met Walpole but seems to have been completely unaware of what Walpole was doing—just as John Adams, a generation later, failed to notice that the younger Pitt was reaffirming and strengthening cabinet government.

Montesquieu's disregard of the changing pattern of British politics is all the more surprising since the crucial sixth chapter of the eleventh book of *The Spirit of the Laws* bears the title, "Of the Constitution of England." The reader could be forgiven if he wondered whether the printers had made a mistake and slipped in the wrong heading, because the references to concrete experience which this chapter contains are extremely brief and deal with several other countries as well as with England. Worse still, when English government is mentioned this is done on the assumption that the executive was, in fact as well as in theory, lodged in the King. Montesquieu went so far as to write: "If there were no monarch, and if the executive power were entrusted to a certain number of people drawn from the legislature, there would be no liberty, because the two powers would be united since the same persons would at times, and always could, have a share in the one and in the other."[29] This comes fairly close to being the actual condition of British government as it was in 1748, when *The Spirit of the Laws* was published. George II was on the throne, but his influence on events was so slender as to justify, even for that period, calling England the "royal republic" which she finally became during the second half of the 19th century. "A certain number of people drawn from the legislature" *were* governing the country. Still, this is the England which Montesquieu had in mind when, about to progress from the fifth to the sixth chapter of the eleventh book, he wrote: "There is also a nation in the world which has political liberty as the direct object of its constitution."

Montesquieu then proceeds to examine "the principles upon which (English) political liberty is founded." These principles are considered identical with those of liberty in general. There follows, however, not a deduction from the facts of Britain's "living constitution," but a series of apodictic statements, some of which are highly perceptive whereas others are influenced by an inclination to let a witty aphorism take over where a careful syllogism would be in order.[30] This approach (so typical of certain French writers) makes it necessary to first state, and then critically examine, the propositions advanced by Montesquieu one by one, and then to ask to what extent they were accepted by the Framers.

Montesquieu's first proposition is: "Constant experience shows us that man invested with power is apt to abuse it, and to carry his authority as far as it will go. Is it not strange, though true that virtue itself has need of limits?"[31]

Second, "To prevent this abuse it is necessary that, by the disposition of things, power arrests power. A constitution can be of such a nature that no one will be forced to do things to which the law does not oblige him, and not to do those which the law permits."[32]

Third: "When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner."

Fourth: "Again there is no liberty if the judiciary power be not separated from the legislative and executive." This does not, however, mean that the judiciary is to be given a veto over legislative and executive acts, since "Of the three powers of which we have spoken, the one to judge is in a certain way null (*nulle*)" Montesquieu concludes that there really are but two powers, but since they need "a regulatory power (in the form of two chambers) in order to temper them, the part of the legislative bodies composed by the nobles is very suited (*propre*) to produce this effect."

Evidently, then, there is no complete identity between the views of Montesquieu and those of the Framers, whose work was to lay the basis for a powerful judiciary and who wanted none of an hereditary second assembly. Differences also exist in the classification of powers. Montesquieu states in the first sentence of the sixth chapter: "There are in every state three powers: The legislative power, the executive power pertaining to the affairs which depend on international law, and the executive power pertaining to those which depend on civil law." Thus, there are separate powers for foreign and domestic policy. For the former Montesquieu seems to postulate something similar to what Locke[33] had in mind when he spoke of a separate "federative power," a term with implications to which we shall return.

Still, we can disregard both what Montesquieu says about the judiciary power, about an hereditary assembly, and about the kinds of executive power. His theory of the relations between the executive and the legislature was, in its decisive aspects, endorsed by John Adams, James Madison, James Wilson, and the other leading Framers. What is more important, it corresponds to the logic of the Constitution. The core of the theory of a system of divided (and antagonistic) powers lies in this area of agreement.

### 5. Montesquieu's originality.

This applies to practice as well as to theory. Powers are, under the United States Constitution, not just divided at one single point; the division goes straight through the system:[14]

1) The President is elected in one process; the two houses of Congress are chosen each in a process of its own. The different rules of election mean different modes of selection; the type of person who is elected President tends to be different from the type elected to House and Senate.

2) Since "no person holding any office under the United States shall be a member of either House during his continuance in office" neither the President, nor anyone else serving in the executive branch can be a member of the legislature.

3) The Congress cannot force the President, or any member of his administration, out of office by a vote of censure. Impeachment is a problem of its own, judiciary rather than political in its nature. The one case in which it was tried and failed, that of Andrew Johnson, only serves to indicate the possibility of political perversion, and the other one in which its availability forced Richard Nixon out of office underlines the judicial as well as the highly exceptional nature of the process.

4) The President cannot resolve a conflict with the Congress by dissolving either House or both.

5) Both President and Congress are flanked by the Supreme Court and the Federal Judiciary. After John Marshall asserted the right of judicial review its multiform consequences began to cast a large shadow over what the President and the Congress were able to do.

6) All laws, including the budget, require the consent of both houses. Conflicts between House and Senate, which are not resolved with the help of the conference committee, at best delay and modify and at worst muddle and paralyze government policy.

7) Certain provisions in the Constitution which, while not a necessary part of the system, enhance its effects. The most important is the need of a two-thirds vote for the Senate's consent to the ratification of a treaty.

8) The existence of the State governments adds to the overall effects of the separation of powers. This vertical separation is, however, different from the horizontal one which pits the various branches of the Federal Government against each other, and may serve the purposes of constitutional government rather well.

9) Conditions are not the same at the end of the Twentieth as they were at the end of the Eighteenth Century. On the one hand, the development of political parties helped mightily to unite what the Constitution had separated. On the other hand, during the Twentieth Century first the development of the popular primary and then the "reforms" of the 1960's and 1970's weakened the integrating forces of party.—

It is time to return to the theoretical underpinning of the separation of powers by Montesquieu. We must begin by distinguishing its major characteristics from those of its predecessors. As Herman Finer[15] put it: "The separation of powers was *invented* (italics supplied) by Montesquieu . . ." It does not matter that Finer in a later edition of his book[16] says that that theory "was first *fully formulated* (italics supplied) by Montesquieu." Between Montesquieu and his predecessors there is a difference of quality, and it is decisive.

The list of the pertinent authors begins with Aristotle,[17] who clearly distinguishes between first, the "deliberative" element, second, "the one that is concerned with the magistracies," and third, the one "which has judicial power." Aristotle's emphasis is, however, on distinction rather than separation. Thus, the "deliberative" element also exercises judicial functions, as it "inflicts death, exile and confiscation." Further, it is "the supreme element in states"—there are no balances. The overall approach is pragmatic. In what one could call an Anglo-Saxon manner Aristotle constantly regresses from abstract theory to the practice of various states with which he is familiar, and does so without any dogmatism.

When considering other writers it is well to disregard most of those listed by John Adams,[38] who largely confines himself to quoting pages of undigested excerpts.[39] The first writer to be truly relevant for both English and American political thinking was John Locke.[40] Locke's approach is rather casual and as undogmatic as that of Aristotle. There is a "legislative power" whose members make the laws, and since that "does not take much time," they adjourn. Thus there arises the need for "a power always in being", the task of which is to "see to the execution of the laws." For this reason "the legislative and executive power come often to be separated." Locke, then, when speaking of the separation between the legislative and the executive power is more intent on stating a fact than on laying down a principle. More surprisingly, and of considerable significance for what has to be said in regard to American government is that Locke's third power is not the judiciary, but the "federative" power, which decides on "war and peace, leagues and alliances, and all the transactions which all persons and communities without the commonwealth." The need for this power arises from the fact that "what is to be done in reference to foreigners depending much upon their actions, and the variation of designs and interests must be left in great part to the prudence of those who have this power committed to them, to be managed to the best of their skill for the advantage of the commonwealth." In this important area there can, even for Locke, not be an "executive" power which simply "executes" the laws passed by the legislature. In general, however, the legislative is the supreme power, and in one passage Locke says that the executive "may be at pleasure changed and displaced" (by the legislature).[41]

Not much has to be said about Blackstone, who wrote after *The Spirit of the Laws* had become a "classic" to which homage had to be paid. Blackstone, too, is sufficiently pragmatic to limit his tribute largely to terminology, retaining the flexibility needed to make the accommodations required by practice. It is precisely such flexibility that Montesquieu quite consistently excludes. His assertions are so bold and impressive that they constitute a whole, the logic of which is not always clear. The basic premise which caused Montesquieu to go so much farther than Locke was stated by him in these words: "But it is an eternal experience that every man who has power is apt to abuse it; he goes to the point at which he encounters limits."[42] If this is a fact it is natural to assume that liberty can be protected only by pitting one holder of power against another one, and permitting no action unless the two (or three, or more) agree.

The assumption implies a basic pessimism in regard to the holders of power, and it has frequently (though not quite correctly) been assumed that behind it there hides a deep-rooted pessimism in regard to human nature in general. The link to the Framers is clearly established in Madison's No. 51 of *The Federalist*: "Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflection on human nature? If men were angels, no government would be necessary."[43] This far-reaching anthropological pessimism has been explained against the background of Puritanism. Whatever its origins, the type of separation of powers embodied in the Constitution calls for it. Rational analysis does not sustain this pessimism; it points to an intermediate position between the optimism of the anarchists and the pessimism of a Hobbes.

Madison and his associates could have found different answers to their problems. If they wanted to refer to angels, they might have gone back to a theologian such as Thomas Aquinas, who felt that even angels needed a government. While perfectly virtuous they might yet disagree—questions pertaining to their community could not, then, be decided except by authority. As a good theologian, Thomas supplemented the argument from reason with one drawn from authority, the Bible referring to the existence of "powers" among the angels.[44]

Americans could also rely on their own personal and political observations. Were not most of the colonists willing to "live and let live"? In their day conditions were not dissimilar to those of what later came to be called the West, where the maxim was "live and *help* live." Neighbors depended upon one another for survival, and enough of them were willing to give that help to make survival possible. In addition, the Framers took it for granted that the type of government under which they were to live was one not based on force, as Machiavelli and Hobbes deemed inevitable, but one which "derived its just powers from the consent of the governed." Whatever authority was established was, then, based on voluntary cooperation; this was hardly possible except on the basis of a measure of mutual trust.

### 8. Montesquieu's mistakes: Cooperation, deadlock and domination

The time has now come to emphasize the vital difference between checks and balances. Checks act like a brake. The forward movement is taken for granted, but if it threatens to get out of control, it can be slowed or stopped. In political life checks clearly presuppose leaders willing and able to act. The checks, however, require the compliance with certain rules, the first purpose of which is to make people think before they act: having to clarify matters for others they must begin by clarifying them in their own minds. Then, consultation with qualified people, and the publicity for their intended action which sets in at a certain stage, promote the purposes of a government based on consent.

There are sanctions for these rules. Thus, under a parliamentary system a prime minister needs the support of his cabinet to prevail in parliament. Even when prime minister and cabinet agree the votes of a parliamentary majority cannot be taken for granted; if a significant number of them disagree they can combine with the opposition and topple the government. The threat of such action will, as a rule, suffice; this is, to take an extreme case, the way in which Neville Chamberlain was induced to resign in 1940. Furthermore, if a political leader treats his parliamentary followers with less respect than they consider their due, he may have to pay the price even after his party has lost power, as did Edward Heath when he was replaced by Mrs. Thatcher.

All of this includes, of course, that incentive to rationality which the need for a free and frank discussion with equals implies. The prime minister of the electronic age may occupy a more eminent position than those of the past, but a recent event demonstrates the influence which cabinet members may exert on their chief: When Mrs. Thatcher did not, as foreshadowed in the Conservative election manifesto to recognize the government of Bishop Muzorewa in Rhodesia, she bowed to the advice of Lord Carrington, her Foreign Secretary. Similarly, she had to yield to substantial Cabinet pressure in regard to Britain's contributions to the EEC when the Foreign Office ministers accepted "three-quarters of a loaf" rather than the whole loaf to which she had committed herself. No two issues could have been more important and more sensitive.

If these are the attributes of checks, balances are something else again. When the term "balances" is applied to politics a conclusion is drawn by analogy. Such conclusions usually appear highly plausible, but they easily turn into the high road to fallacy.

The term "balance" belongs to the field of physics. When we place different weights on a scale we do want a balance; it makes it possible to determine an unknown weight by one that is known. In politics, however, the proper term for "balance" is deadlock.[45] Montesquieu wants two or more equal powers to oppose one another in such a way that none can act without the concurrence of the others—any power's "no" is final.

Montesquieu is too intelligent not to see that the possibility of deadlock is implied in the system: "These three powers should form a condition of rest or inaction." Without hesitating a moment, however, he continues: "But since through the necessary movement of things they are constrained to move, they will be forced to move in concert."[46]

Is not that a logical *salto mortale*? Actually, where Montesquieu sees but one possibility, there are three. First, movement "by concert" may occur. Those placed in a position of rivals may realize that when everyone insists on his own position he endangers the welfare of all. Had action on the basis of this insight not been frequent the Constitution could not have lasted as long as it has. Cooperation is possible, in the first place, because man, even political man, is not "evil" in the sense presupposed by the logic of a *hostile* separation of powers; some kind of separation is, of course, necessary so that one group of people can *check* the other without both having to face the danger of deadlock. In the second place, when parties developed they could at least endeavor to unite what the Constitution separated. The Framers, viewing matters in the context of their time, saw only the antagonistic aspects of party, not the fact that party in itself involves a vast measure of cooperation which can, under favorable conditions, establish an acceptable relationship between the legislative and the executive branches.

Still, a tendency to deadlock is immanent in our constitutional structure, no matter how often it is over-compensated. We cannot agree with Charles A. Beard when, in a persuasively formulated passage,[47] he tries to explain the problem away by speaking of a "dynamic equilibrium." That is a contradiction in terms, and what Beard says to explain useful impediments to what might be hasty political action clearly belongs under the heading of "checks" rather than of "balances."

As an illustration, brief reference may be made to the two cases in American history which demonstrate a deadlock in almost "pure" form. The first is the conflict between Woodrow Wilson and the Senate which kept the United States out of the League of Nations. It could have been resolved, but neither Wilson nor Henry Cabot Lodge did what was necessary for that purpose. The forces which pulled them apart did not only arise from their respective character traits, although these played their part. Both operated under a system which encouraged conflict and, when conflict developed, provided for no institutional mechanism by which it could be resolved.

The second major case of an open and unresolved deadlock concerns domestic developments. As Senator Fulbright put it:

> I think in Hoover's later years, the severity of the depression was vastly accentuated by the 2 years between 1930 and 1932 in that Congress would not go along with him. We could not do much. We just sat there and things got much worse in that period. You had a 2-year period in which perhaps something should have been done to prevent or lessen the severity of that situation.

When Representative Cox asked: "Is that a criticism of Mr. Hoover or of the Congress?" Senator Fulbright answered: "I think it is a criticism of the system. There was no way out of the situation."[48] What Senator Fulbright meant to say hardly was that there was absolutely no way out of the situation, but rather that to find such a way went "against the grain." Our leaders were confronted with what the medieval theologian would have designated as a call for "works of supererogation." Conceivably, such works might be performed, but in the ordinary course of events this will not easily be done by ordinary men. On such ordinary men we must, however, rely.

There exists, in addition to the possibilities of cooperation and of deadlock, the one of domination. First, the Congress might ride roughshod over the executive and the judiciary. This is what the Framers, including the absent Jefferson, feared the most. As we shall see shortly, they did not do so because they were antidemocratic, but on account of what they had observed both during the war and the following years.

More recently, however, and in particular since the New Deal and the Second World War, events have tended to favor executive rather than legislative domination. The authors of *The Federalist* could not foresee details, but in Madison's the Federalist No. 49[49] we read:

> It might, however, sometimes happen, that appeals would be made under circumstances less adverse to the executive and judiciary departments. The usurpation of the legislature might be so frequent and so sudden, as to admit of no specious coloring. A strong party among themselves might take sides with other branches. The executive power might be in the hands of a peculiar favorite of the people. In such a posture of things, the public decision might be less swayed by prepossessions in favor of the legislative party.

Madision was aware of the fact that executive usurpation is no more conducive to the general welfare than its legislative counterpart. In his words: "The *passions*, therefore, not the reason of the public will sit in judgment," though "the passions ought to be controlled and regulated by the government."

A domination of the other branches by the judiciary is a different matter. Judges will not deliberately seek it; if they did and won out they would not have the means to establish an effective control of the government. Still, of late there have been repeated complaints about an "imperial judiciary"; actually, a French author wrote a well-known book with the title, *The Government of the Judges*. more than a generation ago.[50]

In any case, Montesquieu's assumption that the three powers would *have* to "move in concert" runs up against logic as well as against the verdict of history. Furthermore, we shall have repeated occasion to see that where there *is* cooperation it is fraught with problems of its own.

#### 7. Did the Framers mean It?

The Framers would have thought twice had they foreseen such results, all the more so since their intellectual leaders at times clearly rejected its major premise, anthropological pessimism. They were familiar with its radical version, as set forth by Machiavelli and Hobbes, and wanted none of it. John Adams expressed himself most clearly when he said about men: "They were intended by nature to live in society, and in this way to restrain one another and in general they are a very good kind of creature; but they know each other's imbecility so well that they ought never to lead one another into temptation."[51] That reads like a persuasive justification for checks; it does not warrant balances.

Similar considerations apply to James Madison, who had termed the need for government "a reflection on human nature." The theory of "countervailing powers" which he developed in *The Federalist* No. 10 does not call for balances. Similarly, in *The Federalist* No. 51 he says that "the compound republic of America" comprehends" in the society so many separate descriptions of citizens as will render an unjust combination of the majority of the whole very improbable if not impracticable." He does, in the same essay, endorse the separation of powers, though the reader may be forgiven if he wonders why. That question also arises on the basis of his earlier analysis of "The Vices of the Political System of the United States."[52] Protection against the abuse of power is once again seen in terms of "contervailing forces," in particular in a large country. The only additional reason for hope "is such a process of elections as will most certainly extract from the mass of the Society the purest and noblest characters which it contains . . ."[53] No reference is made to Montesquieu and his proposals. Such references do occur quite consistently in *The Federalist* nos. 47-51, but we must remember that these essays were to defend the Constitution against the charge that it did not go far enough in providing for a separation of powers. Madison, then, was on the defensive; he was not the first one to overstate his views in such a situation.

The crucial statement of Madison's views on power is to be found in a letter to

Thomas Jefferson of October 17, 1788, in which he could explain himself in all freedom to a trusted friend:[54]

> It has been remarked that there is a tendency in all Governments to an augmentation of power at the expense of liberty. But the remark as usually understood does not appear to me well founded. Power when it has attained a certain degree of energy and independence goes on generally to further degrees. But when below that degree, the direct tendency is to further degrees of relaxation, until the abuses of liberty beget a sudden transition to an undue degree of power. With this explanation the remark may be true; and in the latter sense only is it in my opinion applicable to the Governments in America. It is a melancholy reflection that liberty should be equally exposed to danger whether the Government have too much or too little power, and that the line which divides these extremes should be so inaccurately defined by experience.

This statement differs from Montesquieu first in regard to the historical background. While Montesquieu did reject a concentration of power under any form of government his personal thrust was directed against the absolute monarchy of his day. Madison was confronted with legislative domination, and this made him appreciate the positive aspects of executive action.

Madison was equally appreciative of the positive aspects of power in general. Power may, "when it has attained a certain degree of energy and independence," go "on generally to further degrees." But Madison also says that "when below that degree, the direct tendency is to further degrees of relaxation, until the abuses of liberty beget a sudden transition to an undue degree of power." Too little power, then, is as dangerous as too much. The Framers agreed with the view that the origin of tyranny lies, as Plato was the first to emphasize, in an excess of freedom. This destroys authority and calls forth a "leader" who rules by brute force. For Madison power was a national resource, needed badly to restrain those elements in society which are strong enough to oppress the weak, and thus secure the freedom of all.

Alexander Hamilton followed the same line of thought, though he of all the Framers, painted human weaknessess in the darkest colors. In *The Federalist* No. 26 he almost turns into an advocate of "positive thinking.": "Confidence must be placed somewhere . . . it is better to hazard the abuse of that confidence than to embarrass the government and endanger the public safety by impolitic restrictions on the legislative authority."[55] He continues by anticipating the results of parties: ". . . the spirit of party . . . must be expected to infect all political bodies." Therefore, there will always be people in the Congress "willing enough to arraign measures and criminate the views of the majority." He concludes: "If the majority should be really disposed to exceed the proper limits, the community will be warned of the danger and will have an opportunity of taking measure against it."[56] Hamilton, then, refers to the checks of the kind which a parliamentary opposition brings to bear on a government; it is frequently more potent, and always more constructive, than are the balances of mutually hostile powers.

There is no more fitting way of concluding this discussion than by quoting from *The Federalist* No. 55[57], for since authorship was claimed by both Madison and Hamilton it must reflect the views of both:

> As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form. Were the pictures which have been drawn by the political jealousy of some among us faithful likenesses of the human character, the inference would be, that there is not

> sufficient virtue among men for self-government; and that nothing less than the chains of despotism can restrain them from destroying and devouring one another.

The Framers rejected not only the anthropological foundation of Montesquieu's system, they clearly intended to avoid some of the results which their version of that system was to produce. Theirs was not a separation of powers in the abstract; it was a separation *against*. Actually, in this they followed the example of Montesquieu, who in theory rejected the concentration of power under any form of government but who in fact protested against the absolute monarchy prevailing in the France of his day. The Framers, in their turn, protested against the concentration of power in the legislature. The early state constitutions reflected the memory of the battles fought against royal authority. As has happened in such cases throughout history[58] the executive was distrusted and its powers minimized. Governors were mere figureheads. The Governor of Virginia, for example, was elected by the legislature for at most three one-year terms. The legislators considered themselves the only true representatives of the people: they assumed certain executive functions which they were ill-equipped to exercise, and trespassed on the judiciary. When Madison complained that "The legislative department is. . . . drawing all power into its impetuous vortex"[59] he was merely echoing Jefferson's[60] statement that "all powers, legislative, executive, and judiciary" were resulting to "the legislative body," leading to the conclusion that "173 despots would certainly be as oppressive as one," and some of the legislators were starkly illiterate. Therefore, when the Framers expressed fear of legislative domination this was not a result of anti-democratic tendencies but a simple reaction to an all but universal fact.

John Adams, once again, states the Framers' intentions most lucidly. In the very preface of his "Defense"[61] we read: "If there is one certain truth to be collected from the history of all ages, it is this; that the people's rights and liberties, and the democratical mixture in a constitution, can never be preserved without a strong executive, or, other words, without separating the executive from the legislative power."[62]

The separation of powers, then, was to provide for, rather than forestall, a strong executive. However, Adams' logic broke down when it came to linking the means to the end. The constitution did give the President a much broader sway of power than was held by any governor. But it also made Adams wonder from the first whether the executive was going to be as strong as the situation required. He even lost himself in pettyness when endeavoring to save what he could. Thus, when President Washington had delivered his first address to the newly convened Congress, Adams, as the presiding officer of the Senate, spoke of "his most gracious speech." When the minutes were read and the phrase was repeated, the dour Scot, Senator William Maclay[63] exploded: the Revolution had seen a struggle against "kingly authority," and "everything related to that species of government is odious to the people." Therefore, no "most gracious"! Adams excitedly stood up and spoke of the need for "dignified and respectable government." He had been one of the first to join in the Revolution but "if *he could have thought of this, he would never have drawn his sword.*" Maclay had his way, however; the offending words were stricken from the record. After the session had adjourned Adams took Maclay aside and reemphasized his wish for an efficient government. According to Maclay: "He got on the subject of checks to government and the balances of power. . . . I caught at the last word, and said undoubtedly without balance there could be no equilibrium, and so left him hanging in geometry."

It is difficult not to think of John Adams when reading what James A. Michener[64] writes about one of his characters:

> He speculated on this (society's need for

> a compromise between radicals and conservatives) for some minutes, and true to habit, whenever he dealt with large concepts such as *society, mankind* and *change* he began to think in French, and this was the fatal canker in his character; by every external sign he was fitted to be an English gentlemen, except that he had learned to read French books, and these had corrupted him.
>
> He was enormously captivated by Montesquieu and had spent one summer evaluating the Frenchman's challenging theory that the governance of man is best served by dividing authority into three insulated compartments: executive, legislative, judicial. It had never occurred to him that those were the functions of government, but under Montesquieu's exquisite tutelage he saw that this was the case.

There follows a happy ending which, however, was not to be that of John Adams:

> But as soon as he reached this conclusion, he drew back from its logical consequences: The best way to attain this balance is by following the English system. A just king, a stalwart Parliament, a wise group of judges.

### 8. Some strong points from the "Men of Little Faith."

It was left to one of the Anti-Federalists to take a critical look at the very essence of the separation of powers. "Centinel," whose "letters" according to John Bach McMaster and Frederick D. Stone[65] excelled as much among the writings opposing the Constitution as *The Federalist* did among those defending it. Significantly, "Centinel" concentrates his fire on John Adams, according to whom "the administrators of every government will ever be actuated by views of private interest and ambition, to the detriment of the public good. . . . therefore, the only effectual method to secure the rights of the people and promote their welfare, is to create an opposition of interests between members of two distinct bodies. . ." "Centinel" asks "how is the welfare and happiness of the community to be the result of such jarring adverse interests?"[66] There at least ought to be "a corresponding weight in the community" to tilt the balance in the proper direction, but Adams had not shown where it was, nor had he been able to refer to any government where such conditions actually existed.

"Centinel" also feels that government, in order to be responsible, must be simple: "If you complicate the plan by various orders, the people will be perplexed and divided in their sentiment about the source of abuses or misconduct. Furthermore, the "great body of the people never steadily attend to the operations of the government." Having their task made unduly difficult, they will, it is implied, display even less interest, with the result "that the interposition of the people may be rendered imperfect or perhaps wholly abortive."

With all of this it is not too difficult to agree. "Centinel" is, however, less convincing in his alternative. He sees it in the constitution of his native Pennsylvania with its unicameral legislature, "elected for a short period, and necessarily excluded by rotation from permanency . . ." There was not much of an executive, and it is hard to see how responsibility could be clearly fixed with most powers concentrated in the legislature. On the federal level this arrangement could hardly have failed to lead to the capriciousness and the futility characteristic of "government by assembly."

"Centinel's" points in regard to the separation of powers[67] are nevertheless well taken, and much in subsequent experience has justified them. That the strength of "Centinel's arguments was not perceived at the time is largely due to that "parade of imaginable horrors" in which he joined his fellow Anti-Federalists. Thus, he would "make it appear to the meanest capacity . . . that it (the Constitution) is a most daring attempt to establish a despotic aristocracy among freemen, that the world has ever witnessed."[68]

Similar considerations apply to George Mason. He was one of the most active and constructive debaters of the Constitutional Convention, but in the end he joined two other members in refusing to sign. His objections[69] cover a number of points but the most important one concerns the failure to provide for an executive council, which Mason regretted even more than several others, including Benjamin Franklin and Edmund Randolph. Its absence was "a thing unknown in any safe and regular government." The result would be "the lack of proper information and advice." The President would "generally be directed by minions and favorites." He might also become "a tool of the Senate," or listen to a council composed of "the principal officers of the great departments—the worst and most dangerous of all ingredients for such a council, in a free country."[70] Mason's objection was that the members of such a council "may be induced to join in any dangerous or oppressive measures, to shelter themselves, and to prevent an inquiry into their own misconduct in office."

The only part of this argument which is valid consists in the reference to the possibility that the President might "generally be directed by minions and favorites." Cabinet members appointed by the President and liable to dismissal at will could not provide their chief with the truly independent advice which he needs. In this respect it is particularly surprising that the alternative of a British-type cabinet system was not considered, although James Iredell, in his reply to Mason, at least managed to describe it in recognizable terms.[71] With such an institution there was no need for a separate process in order to elect independent men representing the various parts of the country. A cabinet will be constituted so as to include people from more than one region, and all of them have a true political standing of their own.

Such a cabinet, too, is the logical place to unite policy and politics. Whoever is in charge of a department will, if he is competent, be aware of its problems. Having been elected to his seat in the House, and knowing that the survival of the government depends upon the next election, he will pay attention to the need to make the voters understand what is being done and why.

Lastly, such a cabinet is the natural place in which to overcome departmental egotism and shortsightedness. Its members will remind each other that the people will judge them on the basis of their overall record; the prime minister will do his best to overcome what remains of the inevitable centrifugal tendencies. An American President will do the same, but will have to operate under a setup[72] about which Woodrow Wilson wrote:

> The Makers of the Constitution constructed the Federal Government upon a theory of checks and balances which was meant to limit the operation of each power and to allow to no single part or organ of it a dominating force; but no government can be successfully conducted upon so mechanical a theory. Leadership and control must be lodged somewhere; the whole art of statesmanship is the art of bringing the several parts of government into effective cooperation for the accomplishment of particular common objects . . .

In conclusion we must return to a main concern which animated George Mason and several of his prominent contemporaries: the fear of the irrational tendencies which were bound to assail a single-person executive. A few years later Thomas Paine[73] was to write:

> An individual by election is almost as bad as the hereditary system except there is always a better chance of not having an idiot. (Paine thought of George III) . . . He will have no person to consult with of a standing equal with himself, and consequently be deprived of the advantages arising from "discussion."
>
> Those whom he admits in consultation will be ministers of his own appointment, who, if they displease by their advice, must expect to be dismissed. The authority also is too great, and the business too complicated, to be entrusted to the ambition or the judgment of an individual . . .

In subsequent American history attention to this warning has been rare, but Watergate constituted a powerful reminder of its validity. The strange events associated with that name had, however, their precedents, although these have hardly ever been analyzed as vigorously as was done by George Reedy[74] in the case of the Johnson presidency.

George Mason and other outstanding men of the constitutional period did sense a real danger. They condemned themselves to futility, however, when they advocated such alternatives as a multiple executive or an executive council, the drawback of which their opponents could easily demonstrate. The two sides could have reconciled their differences had they been aware of what was then being developed in England. The cabinet system provides for the unity of action dear to Hamilton and Madison, and it contains an effective council for the chief executives, as desired by Mason, "Centinel" and Paine.

## *Notes*

1. Arthur T. Prescott, *Drafting the Federal Constitution. A Rearrangement* of Madison's Notes. (Baton Rouge: Louisiana University Press, 1941), p. 446.
2. As George Burton Adams, *An Outline Sketch of English Constitutional History*. (New Haven: Yale University Press, 1918), p. 157, put it: "This was a great step forward, but it was not yet a matter of principle. No one supposed it to be more than a mere matter of convenience, and a long time passed before its real meaning began to be understood. It was in truth the beginning of the principle of ministerial responsibility with all its applications in the present constitution."
3. F.A. Maitland, *Constitutional History of England*. (Cambridge: The University Press, 1950), p. 292.
4. Walter Bagehot, *The English Constitution*. (The World's Classics: Oxford University Press, 1933), p. 13, was to illustrate this aspect of solidarity, as it developed at a later date, by an anecdote: "It is said that at the end of the cabinet which agreed to propose a fixed duty on corn, Lord Melbourne put his back to the door, and said, 'Now is it to lower the price of corn or isn't it? It is not much matter which we say, but mind, we must all say the *same*.'."
5. *The Governance of Britain*. (London: Weidenfeld and Nicholson, 1976). Wilson reports that when his ability to ask a minister to resign was put to a test, "I was told 'A Minister holds office only at the Queen's pleasure and the Queen in such matters accepts the advice of the Prime Minister.' "
6. On February 13, 1741, a motion was introduced in the House of Commons which charged: "That one person has grasped in his own hands every branch of government, that one person has attained the sole direction of affairs, monopolized all the favors of the Crown, composed the disposal of all places, pensions, titles, ribands as well as all preferments, civil, military and ecclesiastical; that one person has made a blind submission to his will, both in Elections and Parliament, the only terms of present favor and future expectation. I therefore move that an humble address be presented to His Majesty, that he would be graciously pleased to remove the R.H. Sir R. Walpole from his presence and counsels forever." (Lord Mahon, *History of England*, Vol. III, 4th edn., p. 304. Here quoted from Wilhelm Hasbach, Die parlamentarische Kabinetts regierung (Stuttgart: Deutsche Verlagsanstalt, 1919), p. 5.
7. Thomas Fleming, "The Spirit of 74," *The New York Times Magazine*, June 30, 1974, p. 11.
8. As Walter Bagehot (op. cit., p. 52) put it: ". . . in the so-called government of Lord North, George III was the government. Lord North was not only his appointee, but his agent. The minister carried on a war which he disapproved and hated, because it was a war which his sovereign approved and liked. Inevitably therefore, the American Convention believed the King, from whom they had suffered, to be the real executive, and not the minister, from whom they had not suffered."
9. Thomas Fleming, "The Spirit of 74", *op. cit.*, p. 11.
10. *Encyclopedia Britannica*, 1962 (Chicago and London, 1962).
11. John Fortescue, ed., *The Correspondence of George III*, Vol. V, (London: Macmillan, 1928), p. 395.
12. For the text see Fortescue, *op. cit.*, p. 425.
13. Harold Wilson, *The Governance of Britain, op. cit.*, p. 15.
14. "Viewed with the searching eye of criticism, the main defect of this book *(A Defense of the Constitutions of Government of the United States of America)* as a treatise appears to be its want of a methodical treatment of the subject; a fault which is owing to the hasty manner in which it was prepared to meet a particular crisis, having been commenced on the 4th of October, 1786, and finished on the 26th of December of the next year. The author . . . took too little care of the shape in which his thoughts were clothed." (*A Defense of* . . . Quoted from a reprint by the Da Capo Press (New York, 1971), p. 274.
15. "The British throne is surrounded by counsellors. With regard to their authority, a profound and mysterious silence is observed. One effect, we know, they produce; and we conceive it to be a very pernicious one. Between power and responsibility, they interpose an impenetrable barrier. Who possesses the executive power? The king. When its baneful emanations fly over the land, who are responsible for the mischief? His ministers. Amidst their multitude and the

secrecy, with which business, especially that of a perilous kind, is transacted, it will be often difficult to select the culprits; still more so, to punish them. The criminality will be diffused and blended with so much variety and intricacy, that it will be almost impossible to ascertain to how many it extends, and what particular share should be assigned to each.

"But let us trace this subject a little further. Though the power of the king's counsellors is not, as far as I can discover, defined or described in the British constitution; yet their seats are certainly provided for some purpose, and filled with some effect. What is wanting in authority may be supplied by intrigue; and, in the place of constitutional influence, may be substituted that subtle ascendancy, which is acquired and preserved by deeply dissembled obsequiousness. To so many arts, secret, unceasing, and well directed, can we suppose that a prince, in whose disposition is found any thing weak, indolent, or accommodating, will not be frequently induced to yield? Hence spring the evils of a partial, an indecisive, and a disjointed administration." (*Lectures on Law, The Works of James Wilson*, Robert Green McCloskey, ed., Vol. I (Cambridge, Mass: Harvard University Press, 1967), pp. 318–319).

Another writer "located the spring and causes of all the distresses and complaints of the people in England or America 'in a kind of fourth power that the constitution knows nothing of, or has not provided against.' This 'over-ruling arbitrary power, which absolutely controls the King, Lords, and Commons,' was composed, it was said, of the 'ministers and favorites' of the King, who, in defiance of God and man alike, 'extend their usurped authority infinitely too far,' and, throwing off the balance of the constitution, make their 'despotic will' the authority of the nation." (Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass: Harvard University Press, 1967), pp. 8–9.

16. Modern Library Edn., (New York: Random House, 1937), p. 313.
17. Benjamin F. Wright, Jr., "The Origins of the Separation of Powers in America," *Economica*, May 1933. Sidney George Fisher, *The Evolution of the Constitution of the United States*. Showing that it is a Development of Progressive History and not an isolated Document Struck off at a Given Time or an Imitation of English or Dutch Forms of Government (Philadelphia: J.B. Lippincott, 1897), and Ellen E. Brennan, *Plural Office Holding in Massachusetts, 1760*–1780 (Chapel Hill: University of North Carolina Press, 1945).
18. The psychological currents of the time had their part in this failure. As a well-known textbook puts it: "The persistent, deep-rooted American suspicion that tyranny lurks in the executive is a tradition rooted in colonial experience." (Wilfred E. Binkley and Malcolm C. Moos, *A Grammar of American Politics*, 2nd edn. (New York: Knopf, 1952), p. 23. The authors also quote (on p. 25) from W. M. West, *American History and Government* (Boston, 1913), p. 228, a resolution voted by a Massachusetts town during the Revolution ". . . . that it is our Oppiniun that we do not want any Goviner but the Guviner of the universe and under him a States Gineral to consult with the wrest of the united states for the good of the whole."
19. In a letter to Thomas Jefferson, dated September 17, 1823, Adams (*The Works of John Adams*. Vol. X. (Boston: Charles C. Little and James Brown, 1851), pp. 410–411) states: "Mr. Jay had been chosen a member of that convention (the one which drew up the New York constitution) . . . and as Duane told me, he had gone home with my letter to Wythe (published as "Thoughts on the Constitution") in his pocket, for his model and foundation; and the same Duane, after the Constititution appeared, asked if it was not sufficiently conformable to my letter to Wythe. I assured him, I believed it would do very well."
20. L.H. Butterfield, ed., *Diary and Autobiography of John Adams* (Cambridge, Mass: Harvard University Press, 1961), p. 123. For references to Montesquieu by other Massachusetts writers, see Ellen Brennan, op. cit., pp. 59–66.
21. *Diary . . . . op. cit.*, p. 142.
22. "A legislative, and executive, and a judicial power comprehend the whole of what is meant and understood by government. It is by balancing each of these powers against the other two, that the efforts in human nature towards tyranny can alone be checked and restrained, and any degree of freedom preserved in the constitution." *The Works of John Adams*, Vol. IV, *Op. cit.*, p. 186.
23. The letter was published as "Thoughts on Government: Applicable to the Present State of the American Colonies." (*The Works of John Adams*, Vol. IV, *op. cit.*, pp. 190 ff.
24. *The Works of John Adams, op. cit.*, Vol. IV, pp. 423–427.
25. "I am fearful that the principles of government inculcated in Mr. Adam's treatise, and enforced in the numerous essays and paragraphs in the newspapers, have misled some well designing members of the Convention." (Letters of Centinel, No. I, John Bach McMaster and Frederick Stone, *Pennsylvania and the Federal Constitution*. (Philadelphia: The Historical Society, 1888), pp. 567–568.
26. *The Making of the Constitution*. (Boston: Little, Brown, 1928), p. 524.
27. Routine agreement with Montesquieu was, however, not always expressed so deferentially. Thus "Artistides" refers to the separation of powers as "this hackneyed principle." (Paul Leicester Ford, *Pamphlets on the Constitution of the Constitution of the United States* (Brooklyn 1888, Reprint (New York: Da Capo Press, 1968), p. 229.
28. *The Federalist, op. cit.*, No. 47, p. 313.
29. Montesquieu, *De l'Esprit des Lois*, ed. by Gon-

zague Truc, published in the *Classiques Garnier* (Paris, without year), Vol. 1, p. 169. Montesquieu's *Notes sur l'Angleterre* (Oeuvres Complètes, Préface de Georges Vedel (Paris: Macmillan, 1964), pp. 331-334) are equally brief, and the references to English government even more capricious than in *The Spirit of the Laws*. Robert Shackleton (*Montesquieu, A Critical Biography* (London: Oxford University Press, 1961), p. 126) states that "it was through the eyes of the great anti-Minister Bolingbroke, the power behind the opposition to Walpole. . . . that Montesquieu saw English politics." This may be one of the reasons for Montesquieu's failure to come to grips with British political reality.

30. Montesquieu's editor (*op. cit.*, p. xvi) quotes a Madame du Deffand who, apparently, felt the same way when she said that "this Spirit of the Laws was spirit about the laws."—"cet Esprit des Lois était de l'esprit sur les lois."
31. *The Spirit of the Laws*, Hafner Library of Classics edn. (New York: Hafner, 1941), pp. 151-152 (11th Bk., Chaps. 4 to 6).
32. These two sentences are direct translations from the French, since the translation by Thomas Nugent, here quoted from the Hafner edition, is imprecise. Thus Montesquieu does not simply demand that "power should be a *check* to power." The French "*Il faut que, par la disposition des choses, le nouvoir arrête le pouvoir*" means that one power is always able to *stop* any other, not just *check* it. Similarly, "*la disposition des choses*" hardly means "the very nature of things"; it implies a deliberate arrangement calculated to produce a certain result.
33. John Locke, *Of Civil Government*, Bk. II, Chap. 12, Everyman's Library edn., (London: E.P. Dutton & Co., Inc., 1924), p. 191.
34. The most succinct analysis of this subject remains Ernest S. Griffith, *The American System of Government*. (New York: Frederick A. Praeger, 1954).
35. *The Theory and Practice of Modern Governments*, rev. by William B. Guthrie (New York: Dial Press, 1934), p. 80.
36. *The Theory and Practice of Modern Government*, rev. edn. (New York: Henry Holt, 1949), p. 94.
37. *Politics*, 4th Bk., Chaps. 14-16. Modern Library Edn. (New York: Random House, 1943).
38. *Defense of the Constitutions of Government*, *op. cit.*, pp. 383 ff.
39. Thus he mentions Lycurgus, the author of the Spartan Constitution, which entrusted the government to a comparatively small number of full (but regimented) citizens, leaving the rest as "helots" and slaves. Plato, also listed by Adams, was inspired by the Spartan example and sketched an ideal state which caused Karl Popper to rank him first among the "Enemies of the Open Society" (See his book, *The Open Society and Its Enemies*, Vol. 1. *The Spell of Plato* (Princeton: Princeton University Press, 1962). Adams had a point, however, when he referred to Polybius, a patriotic Greek who had seen the city-states of his native country change from one form of government to the other, and felt that the stability of the Roman Republic was due to its peculiar version of mixed government. The consuls were the chief officers of the executive, the aristocratic Senate constituted the legislature, and the people in their assemblies, the democratic element. A favorable summary concludes: "Polybius shows not only that each interest will be represented but that they will conflict, and that out of the conflict will grow a compromise that keeps the ship of state on an even keel and prevents excess in any direction." (Thomas I. Cook, *History of Political Philosophy*, (New York: Prentice Hall, 1937), pp. 142-143.) A more critical view holds: "So far as historical accuracy is concerned, Polybius' analysis of the Roman Constitution was not more penetrating than Montesquieu's analysis of the English Constitution. The tribunes of the people—the most important of all the magistracies in later constitutional development—do not fit into his scheme at all." (George H. Sabine, *A History of Political Theory*, (New York: Henry Holt, 1938), p. 155.)

    In any event, Rome's Constitution was headed for disaster. The first century before Christ witnessed the bloody civil war between Marius and Sulla, the rise of Caesar, and finally, the establishment of the empire by Augustus after the battle of Actium (31 B.C.). City and country were filled with joy over the "Pax Romana" which ended internecine warfare at home and provided for security against attacks from abroad, but ended the republic.
40. *Of Civil Government*, 2nd Bk., Chap. 12, here quoted from the Everyman's Library edn., first published in 1924. *op. cit.*
41. Chap. 13, pp. 193-194.

    Reference might be made to the use of the term "executive, which, according to some, owes its popularity largely to Locke. Professor Pelloux introduces a vigorous essay on this term with the words: "There are dead whom one must kill." ("Il est des morts qu'l faut qu'on tue." R. Pelloux, *Remarques sur le mot et la notion de l'exécutif*." Melanges Paul Roubier. Here quoted from a reprint without time and place of publication) Referring to the Swiss jurist, Bluntschli, and to French authors such as Hauriou, he emphasized that it is impossible to limit government action to "executing" existing laws. Locke himself realizes this when he stresses the need for a "prerogative" available for use in emergencies, and he makes the same point even more forcefully when speaking of the special requirements of the "federative power." It would have been better to have avoided the term "executive" entirely. The English tradition calls, instead, for a "government", a word derived from the "gubernator," the helmsman of a ship, who, within certain rules, uses his discretion. He is, above all, responsible for the ship as a whole. A well functioning political system cannot operate in watertight compartments. It needs direction and leadership. Only a government uniting them all can provide for this, mindful as we must always be of the proper relations. By this time, of course, use of the term "executive," has become so ingrained that we can no longer avoid it. We should, however, be aware of its pitfalls.

42. Book XI, Chap. 4, translated from the French.
43. *The Federalist*, Modern Library edn., *op. cit.*, p. 337.
44. Yves R. Simon, *The Nature and Functions of Authority* (Milwaukee: Marquette University Press, 1930), reviewed by Jacques Maritain, *The Review of Politics*, April 1941, pp. 250 ff. Simon restated his views in *The Philosophy of Democratic Government* (Chicago: University of Chicago Press, 1951), pp. 25–26. For the more general aspects of Thomas' teaching on the nature of man, see Clare Riedel, "The Social Theory of St. Thomas Aquinas" in *Proceedings* of the Ninth Annual Meeting of The American Catholic Philosophical Association (Pittsburgh 1933) and Leo R. Ward, *Fundamental Christian Ethics* (St. Louis: Herder, 1954), pp. 88 ff.
45. This means domestic politics. In foreign affairs a balance of power policy may make sense; if powers are balanced to such an extent that none can expect victory over another, the resultant deadlock means peace. The problems of such a policy are discussed in Innis L. Claude, Jr., *Power and International Relations* (New York: Knopf, 1962).
46. Bk. XI, Chap. 6.
47. Charles A. Beard, *The Republic*, (New York: Viking Press, 1942), pp. 190–191.
48. *Organization of Congress*, Hearings before the Joint Committee on the Organization of Congress, 79th Congress, 1st session (Washington 1945), p. 127.
49 Modern Library edn., p. 331.
50. Éduord Lambert, *Le Government des Judes et la Lutte Contre la Législature Sociale aux États Unis: L'Expérience du Contrôle Judiciare de la Constitutionè de Lois.* (Paris, Monsieur Gerard & cie, 1921)
51. *The Works of John Adams*, Vol. IV, *op. cit.*, p. 407.
52. *The Papers of James Madison*, edited by Robert A. Rutland and others, Vol. IX (Chicago: University of Chicago Press, 1975), pp. 348 ff.
53. *Ibid.*, p. 357.
54. *Ibid.*, p. 199.
55. Modern Library edn., p. 159.
56. *The Federalist* No. 26, Modern Library edn., p. 163.
57. Modern Library edn., p. 365.
58. Leslie Lipson, *The American Governor from Figurehead to Leader* (Chicago: University of Chicago Press, 1939), p. 12.
59. *The Federalist* No. 48, Modern Library edn., p. 322.
60. *Notes on the State of Virginia*, quoted from Saul K. Padover, *The Complete Jefferson*. (New York: Harper), p. 648.
61. *Op. cit.*, p. 290.
62. As if that did not go far enough, Adams adds: "If the executive power, or any considerable part of it, is left in the hands of an aristocratical or democratic assembly, it will corrupt the legislature as necessarily as rust corrupts iron, or as arsenic poisons the human body; and when the legislature is corrupted, the people are undone." (*Ibid.*)
63. The Journal of William Macley. Introduction by Charles A. Beard (New York: Frederick Ungar, 1954), pp. 9–11.
64. *Chesapeake* (New York: Random House, 1978), p. 329.
65. *Pennsylvania and the Federal Constitution, 1787/1788* (Philadelphia: The Historical Society, 1888).
66. *Op. cit.*, pp. 568–569.
67. Perhaps it should have been mentioned before that the crucial point is not the separation of powers per se, since there can be no effective checks without it. The problem arises from the *hostile* separation as sketched by Montesquieu: No one is to be trusted, and government is to result from the clashes between untrustworthy groups of people.
68. *Op. cit.*, p. 570.
69. "The Objections of the Hon. George Mason to the proposed Federal Constitution." Addressed to the citizens of Virginia. Printed by Thomas Nicholas, and reprinted in Paul Leicester Ford, *Pamphlets on the Constitution of the United States, op. cit.*, pp. 327–332. See also the brief comments in Cecilia M. Kenyon, *The Anti-Federalists* (Indianapolis: Bobbs Merrill, 1966), pp. 181–192. A comprehensive point-by-point refutation of Mason's arguments is presented in James Iredell's "Answers to Mr. Mason's objections to the new Constitution" (Paul Leicester Ford, *op. cit.*, pp. 33 ff.)
70. Ford, *op. cit.*, p. 330.
71. "I beg leave to carry him (Mason) again to my old authority, England, and ask him, what efficient Council they have there but one formed of their great officers. Notwithstanding their important *Constitutional Council*, everybody knows that the whole movements of their Government, where a Council is consulted at all, are directed by their *Cabinet Council*, composed entirely of the principal officers of the great departments . . ." (Ford, *op. cit.*, p. 348.)
72. *Constitutional Government in the United States* (New York: Columbia University Press, 1961), pp. 54 ff.
73. The Eleventh Fructidor, in Philip S. Foner, *The Complete Writings of Thomas Paine* (New York: Citadel Press, 1945), p. 597.
74. *The Twilight of the Presidency* (New York: Mentor Book American Library, 1970).

from President and Congress: Power and Policy
by Louis Fisher

# 1

# PRINCIPLE OF SEPARATED POWERS

The President and Congress frequently collide when exercising the legislative, spending, tax, and war powers. When they do, it is customary to charge one another with having violated a central tenet of American government: the separation of powers. Although this principle is considered the cornerstone of our system and an article of political faith for the Founding Fathers, there are wide differences of opinion as to what the framers of the Constitution meant by it. We are told that they embraced the doctrine of Montesquieu, yet there is a good deal of doubt as to what *he* meant, or whether they borrowed from him in the first place. Moreover, there remains the question: how should one apply a principle, adopted in 1787, to the situations facing us today?

## *SEPARATED POWERS: ORIGIN AND PURPOSE*

The pitfalls of communication are nowhere more evident than in the concept of separated powers. It seems as though we cannot avoid one misinterpretation without simultaneously committing another. If we fail to insist on separation, then one branch might accumulate too much influence and either mismanage or abuse its powers. On the other hand, if separation is interpreted in a literal and strict sense, this encourages each branch to spin independently and freely in its own orbit. That too can lead to mismanagement and abuse.

### *Separated Powers and Liberty*

Students are often taught that powers are separated as a means of preserving liberties; yet it is equally true that too much stress on separation can *destroy* liberties. The historic antagonism in France between executive and legislature, characterized by an oscillation between administrative and representative forms of government, is a classic example of the danger of extreme separation. The constitutions of 1791 and 1848 represented the most ambitious attempts in France to establish a pure separation of powers. The consequence, in the first case, was the Committee of Public Safety, the Directory, and the reign of Napoleon Bonaparte, while the second experiment led to Louis Napoleon, reaction, and the Second Empire. "It is hardly surprising," Professor Vile has observed, "that this last flirtation with the pure doctrine ended in the same way as others had ended in France—in absolutism."

It was just this kind of political fragmentation and paralysis of power that the framers of the American Constitution wanted to avoid. Justice Story explained that the framers accepted a separation of power, but "endeavored to prove that a rigid adherence to it in all cases would be subversive of the efficiency of the government, and result in the destruction of the public liberties."

### *Separated Powers and Efficiency*

That raises a second issue: the relationship between separated powers and governmental efficiency. In *United States*

v. *Brown* (1965), Chief Justice Warren declared that a separation of powers was "obviously not instituted with the idea that it would promote governmental efficiency. It was, on the contrary, looked to as a bulwark against tyranny." A more famous dictum by Justice Brandeis, in the 1926 *Myers* case, asserts: "The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power."

According to this view, the framers adopted a separation of powers essentially to obstruct the process of government —to slow it down and to frustrate whatever designs one branch might have on another, or on the citizens. This impression pervades not merely college textbooks but professional journals as well.

It is curious that we still identify the framers with a doctrinaire view of separated powers, instead of placing our emphasis on the practical considerations that gave rise to three branches. I would not go so far as to claim that the framers' search for administrative efficiency, and their adoption of a separate executive for that purpose, represents the whole truth. Still, it is at least half the truth, and since this side of the story receives so little attention it should be told. The evolution of separate branches from 1774 to 1789 will be traced in detail in this chapter.

### *Influence of Montesquieu*

Although the Articles of Confederation did not provide for a separate executive and judiciary in 1777, only a decade later the Federal Constitution included the office of the Presidency and the Supreme Court. In this interval of ten years, the political theory of Montesquieu is said to have gained greater acceptance. Under his influence, the Founding Fathers supposedly agreed upon the need for a separation of powers. We have it from Woodrow Wilson that the makers of the Constitution "followed the scheme as they found it expounded in Montesquieu, followed it with genuine scientific enthusiasm." James Bryce, whose *American*

*Commonwealth* is regarded as one of the great works on the United States, said that the Constitution was created "*de novo*, on the most slender basis of pre-existing national institutions. . . ." The framers, he argued, "had for their oracle of political philosophy the treatise of Montesquieu on the Spirit of Laws. . . . No general principle of politics laid such hold on the constitution-makers and statesmen of America as the dogma that the separation of these three functions is essential to freedom."

It would seem as if delegates at the Philadelphia Convention took turns exploring the merits and subtleties of abstract theories, arguing the fine points of political power and human nature. There is, indeed, some evidence to support that picture. Montesquieu was mentioned several times at the Federal Convention and at the state ratifying conventions. He was praised in the *Federalist Papers* as "the celebrated Montesquieu" and the "oracle" who was always cited on the separation doctrine. The idea that the Constitution was the product of mental gymnastics, derived more from theoretical principles than from experience and practice, gained wide currency when William Gladstone described it as "the most wonderful work ever struck off at a given time by the brain and purpose of man." One of the most perceptive students of representative government, John Stuart Mill, maintained that the whole edifice of the Constitution was "constructed within the memory of man, upon abstract principles."

All of this puts the emphasis more on borrowed theory than on first-hand experience. It implies that Madison and the other leading figures used an essentially scriptural approach to the construction of government, first adopting Montesquieu's *The Spirit of the Laws* as the authoritative text and then extracting from it to fashion their arguments. The framers did refer to such foreign writers as Montesquieu, Hume, and Blackstone, but they did so to embellish an argument, not to prove it. The argument itself was grounded on what had been learned at home. Theory played a role, but it was always circumscribed and tested by experience.

To assert that the framers accepted Montesquieu's work as the "Bible of political wisdom" is to overlook their intellectual debt to earlier writers who had urged that government be stabilized by distributing power and by a system of mixed government. It overlooks also the experiences of colonial government in America prior to the appearance of *The Spirit of the Laws* in 1748, as well as the evolving nature of a separate executive and judiciary under the Articles of Confederation. Finally, it ignores the very significant differences between Montesquieu's conception of tripartite government and the form it took in our own Constitution.

These are important points, but to develop all of them here, I think, would prove to be too much of a diversion. If you are interested in the historical and philosophical background of the principle of separated powers, and want to know what this principle actually meant to six of the Founding Fathers, I invite you to read the material in the Appendix.

What I want to do at this point is trace the evolution of a separation of powers under the Articles of Confederation. During that period, the Continental Congress demonstrated its inability to discharge legislative duties and at the same time tend to administrative and judicial matters. This history will help undercut the notion that the framers were influenced primarily by Montesquieu. More important, it will show that the shift of power away from Congress began long before the drafting of the Constitution or the appearance of our more assertive Presidents.

In the years before the Philadelphia Convention, fundamental economic and political forces were at work. The existing governmental structure was gradually discredited, and in its place there appeared new forms and new distributions of power. Shortly after the Constitution had set up the three departments of government, George Washington observed that it was "unnecessary to be insisted upon, because it is well known, that the impotence of Congress under the former confederation, and the inexpediency of trusting more ample prerogatives to a single Body, gave birth to the different branches which constitute the present general government."

## *NATIONAL EXECUTIVES, 1774–1789*

The Articles of Confederation (1777) did not provide for a national executive. There was a President of Congress, but he was merely a presiding officer, without executive power. Thus the Continental Congress had to handle both legislative and executive duties. Congress first delegated administrative responsibilities to a number of committees. That failed to work, and so did the subsequent system of boards staffed by men outside Congress. When departments run by single executives were finally established, in 1781, it was not until delays and makeshift arrangements had imperiled the war effort. "It is positively pathetic," wrote Jay Caesar Guggenheimer, "to follow Congress through its aimless wanderings in search of a system for the satisfactory management of its executive departments."

### *Administration by Committee*

Instead of setting up a separate executive body, the Articles of Confederation authorized the Continental Congress to appoint a committee to sit during a recess of Congress. In addition, Article 9 permitted Congress to appoint "such other committees and civil officers as may be necessary for managing the general affairs of the United States." Committees of that character had been operating for several years prior to the drafting of the Articles. In 1774, for instance, committees were established to petition the King, to examine matters relating to trade and manufacture, and to prepare addresses to the people of Great Britain and Quebec.

After the battles at Lexington and Concord in April 1775, Congress appointed a committee to consider ways and means of securing ammunition and military supplies. A committee was also appointed to maintain regular correspondence with friends in Great Britain, Ireland, and other countries. First called the Committee of Secret Correspondence, it later became the Committee for Foreign Affairs. With the outbreak of the war of independence, Congress formed other committees to handle military preparedness: the Committee of Commerce, to oversee the importation of gunpowder and munitions; the Marine Committee, to construct armed vessels; and the Board of War and Ordnance. In a technical sense these were legislative committees; but in the context of what actually took place, they are best remembered as forerunners of the executive departments of state, commerce, navy, and war.

A rapid proliferation of committees prevented members of Congress from carrying out their deliberative functions. John Adams was kept busy from four in the morning until ten at night, serving, by his own count, on close to ninety recorded committees, as well as on a great number of others that were unrecorded. The appearance of literally hundreds of committees was in part a reflection of factional struggles within Congress. When members failed to gain dominance over one committee, they were often successful in setting up special committees which they could control. Matters having to do with foreign affairs, for instance, were sometimes referred to special committees. The Committee for Foreign Affairs was periodically reduced to the status of an investigating body, or "a mere burial vault for questions which the parent body did not care to face."

Committee work was further hampered by a failure to select members on the basis of special ability. According to one contemporary, most committee members owed their appointment more to zeal and patriotism than to ability: "Competent merchants, therefore, are placed on the Committee for Foreign Affairs. Many colonels and generals are in Congress, but none of them are on the Board of War." Of the Marine Committee, John Jay said that "few members understand even the state of our naval affairs, or have time or inclination to attend to them." Furthermore, fluctuations in the membership of Congress would produce comparable shifts in committee policy. Under these conditions, it was impossible to achieve any coherence or consistency in committee work.

### *A System of Boards*

As a compromise between the committee system and a single executive, Congress tried to relieve delegates of managerial details by establishing boards composed of men from outside Congress. In March 1776, one of the delegates suggested setting up a Board of Treasury, a War Office, a Board of Public Accounts, and others boards. When nothing came of this idea, members of Congress continued to press for better means of execution.

Early in November 1776, Congress authorized the appointment of three commissioners to execute the business of the navy, subject to the direction of the Marine Committee. This body came to be known as the Navy Board. On December 26, Congress appointed a committee to look into the plan of establishing executive boards composed of persons who were not members of Congress. Delays set in again, despite the belief of some members of Congress that the country's safety required immediate reform. William Hooper wrote Robert Morris in February 1777 that the country would be ruined unless competent officers were appointed to manage the nation's funds: "from a false parsimony in saving hundreds in salaries of proper Officers we are sporting away millions in the want of them."

A plan was reported in April 1777 for a board of war and ordnance. Deliberation was postponed and the motion sent back to committee. Another plan appeared in July. Appointments for the board were shelved several times and the matter eventually lost in the shuffle of congressional business. Action finally came in October. The committee report in favor of a board composed of members outside Congress was adopted with some amendments, and appointments to the Board of War were announced the following month.

The introduction of outside personnel helped relieve legislators of some committee work, but it did not noticeably improve the efficiency and dispatch of the war effort. A new Board of War and Ordnance was reconstituted to include members of Congress. Financial administration was divided between a Board of Treasury and the Committee of Finance. When mistakes by the boards occurred, or when the work proceeded at too slow a pace, no single party could be held responsible. Moreover, the boards could not execute legislative business unless Congress disciplined its own activities and expedited matters. There is ample evidence that much of the time saved by delegating matters to the boards was subsequently lost in trifling debate. Members of Congress were especially irritated by proceedings during 1778.

A delegate from Maryland reported that "The Congress do worse than ever: We murder time, and chat it away in idle impertinent talk." Washington learned from Gouverneur Morris that legislative business could have been completed, except that "our superior Abilities or the Desire of appearing to possess them lead us to such exquisite Tediousness of Debate that the most precious Moments pass unheeded away like vulgar Things." One delegate begged to be relieved of his legislative duties, exclaiming that "I'll be dam'd if you ever catch me here again. Those who have dispositions for Jangling, and are fond of displaying their Rhetorical abilities, let them come. I never was so sick of anything in my life." Other letters, equally caustic of congressional behavior, could be cited.

Not until 1781 did Congress take the next step in efficient administration: the appointment of single officers. In the meantime, power fell into the hands of the more energetic and able public officials.

### *"Democratical Forms, Monarchical Substance"*

The reluctance of Congress to entrust power to single executives might seem understandable in view of the lingering enmity toward colonial governors. But when Samuel Adams praised the standing committees of Congress for their democratic qualities, the compliment applied more to appearances than to the existing state of affairs. On an informal level, committee chairmen found that the actual work necessarily fell into their hands, regardless of the number of men on the committee who officially shared power with them.

Gouverneur Morris explained how the lion's share of the work fell on him: "You must not imagine that the members of these committees took any share or burden of the affairs. Necessity, preserving the democratical forms, assumed the monarchical substance of business. The Chairman received and answered all letters and other applications, took every step which he deemed essential, prepared reports, gave orders, and the like, and merely took the members of a committee into a chamber and for form's sake made the needful communications, and received their approbation which was given of course."

Robert Morris became a single executive, in effect, as early as December 1776. He had informed Congress that his powers on the Marine Committee fell short of his responsibilities. Congress subsequently authorized him, in conjunction with his two associates, to adopt whatever measures he deemed proper, not only in marine matters but "in all others, as you shall think necessary, and most conducive to the public Good. . . ." Thus, Morris used his discretionary authority to execute matters specifically related to the navy, as well as to other areas touched by the Marine Committee.

A single executive also emerged in the Committee of Foreign Affairs—not as a result of congressional policy, but because of attrition. Originally staffed with five members of Congress, by the summer of 1779 it had dwindled to one man: James Lovell. To explain why things were not cared for promptly, he wrote to Arthur Lee that "there is really no such Thing as a *Com'tee* of foreign affairs existing—no Secretary or Clerk—further than that I persevere to be one and the other."

The powers of Benjamin Franklin were of formidable dimensions. In seeking new sources of funds in Europe, as the fiscal agent of Congress, he exercised the duties of a secretary of state and a secretary of the treasury. He also had to function as a secretary of war in selecting and forwarding supplies, as a secretary of the navy in supervising a system of privateers in the European waters, and as a supreme admiralty judge in settling the prize questions that arose from privateering.

Though Gouverneur Morris, Robert Morris, Lovell, and Franklin all possessed the responsibilities of single executives, other duties prevented them from discharging their administrative workloads with the proper speed and attention. Gouverneur Morris described the war years as unimaginably laborious: "Not to mention the attendance from 11 to 4 in the house, which was common to all, and the appointments to committees, of which I had a full share, I was at the same time Chairman, and of course did the business, of the Standing Committees; viz., on the commissary's, quartermaster's and medical Departments."

The strain of discharging both legislative and executive duties, and the inevitable delays associated in carrying this double burden, produced strong demands for administrative reform. A delegate from Maryland wrote to his Governor, in the spring of 1779, that "If we talked less, and thought more than we do in Congress, our business in my opinion would be better conducted. I wish with all my heart that we had an Executive." During the fall of 1780 James Madison heard from Joseph Jones of the reforms being contemplated for the civil departments. Jones hoped that single executives would be chosen: "We shall never have these great departments well managed untill something of this kind is done."

### *Single Executive Officers*

Congress had meanwhile taken some cautious steps toward the creation of executive bodies. Early in 1779, American representatives in Europe were instructed to obtain copies of the "arrangements and forms of conducting the business of the treasury, war office, marine, and other offices of government" in France or Great Britain, and in any other kingdoms and republics to which they were accredited. In May 1780, James Duane proposed that a committee be appointed to consider improvements in the Department of Foreign Affairs. The committee report was submitted to Congress the following month. Robert Livingston made a similar motion on August 29 to bring about reform in the other civil departments.

Finally, on January 10, 1781, Congress heard the committee on the Department of Foreign Affairs recommend the establishment of a permanent office "as a remedy against the fluctuation, the delay and indecision to which the present mode of managing our foreign affairs must be exposed." Responsibility for the overall direction of the Department was to fall on a Secretary for Foreign Affairs. Congress adopted the proposal and delineated the duties for the new office. Three days later Congress heard the report of the committee on the other civil departments.

On February 7, Congress adopted a resolution for the creation of three new executive officers: the Superintendent of Finance, the Secretary at War, and the Secretary of Marine. The office of Attorney General was created on February 16 to prosecute all suits on behalf of the United States and to advise Congress on all legal matters submitted to him. This separation of power—the result of a painfully slow evolution of executive departments—stands as a victory not for abstract doctrine but for *force majeure*. In a striking phrase, Francis Wharton said that the Constitution "did not make this distribution of power. It would be more proper to say that this distribution of power made the Constitution of the United States."

Having taken five years to establish executive departments, Congress let several months go by before choosing their Secretaries. Robert Morris, unanimously elected Superintendent of Finance on February 20, refused to take the post unless Congress strengthened it according to his instructions. The chairman of the committee formed to study these demands confessed anxiety at this increase in executive power, but no alternative seemed possible: "Those Powers, or similar ones, must be vested in some one Person, in Order to extricate our Affairs from the Confusion in which they are at present involved. The Board of Treasury only make bad, worse. To go in the present Train is *absolutely impossible. A total Stagnation* must soon take Place, and Ruin cannot be far off. Were our Affairs in a State of *Beginning,* Powers so extensive would not be necessary; but perplexed, deranged and clogged with Abuses and Mismanagements as they are at present, it really appears to me that less Powers would be altogether unavailing." The committee agreed to Morris' terms and he accepted the position.

Alexander McDougall was elected Secretary of Marine on February 27, only to decline the offer. The position was left permanently vacant, with naval matters transferred to the new Superintendent of Finance. Rivalries within Congress postponed the selection of the Secretary for Foreign Affairs for over six months; Robert Livingston was eventually chosen. Election of the Secretary of War took over eight months, until the reluctance of members of the Board of War to surrender their influence was finally overcome, and the open opposition of Samuel Adams and those who preferred administration by committees was defeated.

Ironically, just at the point when Congress had finally consented to appoint single executives, changing events undermined their positions of responsibility. The surrender of Cornwallis in the fall of 1781, and the subsequent initiation of negotiations for peace, removed the chief incentive for stronger national powers and more vigorous executives. Since no external enemy existed to push power to the center, the centrifugal pull of state sovereignty reasserted itself.

The single executives appointed in 1781 became progressively disenchanted with their offices. Livingston complained that his correspondence with foreign nations was restricted to what Congress had declared in a public act, although effective communication required that he be permitted to say things that it would be impolitic for Congress to publicly discuss. Moreover, some matters were important to Livingston but too trivial for legislative attention. Livingston—attracted by a more lucrative position in New York, and claiming that his expenses in office were almost double his salary—offered his resignation after serving little more than a year. He remained in office at the request of Congress until June 1783, at which point the position was filled temporarily by the Secretary of Congress and the Under-Secretary.

Robert Morris had helped bring order to the confused financial condition of the general government. To hasten the progress, Congress delegated still further authority to him. Yet when he tried to tax the states to pay off interest on foreign and domestic debts and to pay soldiers' arrears, his supporters stepped aside. Morris bitingly observed that the Articles conferred on Congress the privilege of asking for everything, while reserving to each state the prerogative of granting nothing. Without power to effect financial reform, and subjected at the same time to malicious charges, he offered his resignation in January 1783. Upon his official retirement in November 1784, the management of finances fell back to the board system.

Benjamin Lincoln had accepted the position of Secretary at War. Faced as he was with insufficient funds for the army and for his own department, and harassed by actual and potential mutinies, it was an achievement on his part to keep the department intact. The army was in process of being disbanded after Cornwallis' surrender, while the evacuation of British troops from New York City, during the final months of 1783, removed the last trace of British authority from the continent—or so it was assumed at the time. Lincoln offered his resignation on October 29, 1783, whereupon the Department of War nearly passed out of existence, with only the chief clerk left in charge.

### *Transition to the Presidency*

The illusion of national security was gradually dispelled by the presence of Indians in the Ohio Valley, British forces in the Northwest, and the Spanish in Florida and the lower Mississippi. The domestic depression that set in after 1785 provided yet another impetus for centralization. In the three years from 1784 to 1786, America purchased large quantities of British goods. An unfavorable balance of trade drew gold and silver toward Britain, and restrictive trade practices by Britain frustrated American efforts to increase her exports. Congress could not enact retaliatory tariffs, embargoes, or navigation laws, for it lacked the power to exclude or tax commerce coming into state ports.

Disputes over the Potomac River led to negotiations between Virginia and Maryland. A conference was held in March 1785 at the home of George Washington. Commissioners from the two states decided that an interstate pact would be of less value than an agreement that would include Pennsylvania, since this would open the way for water communication between the Chesapeake and Ohio Rivers. Moreover, if the commercial complex took in the region around the Chesapeake, invitations should also be sent to New York, New Jersey, and Delaware.

Under Madison's leadership, the Virginia legislature passed a resolution in January 1786, inviting all states to discuss commercial problems at a conference to be held in Annapolis, Maryland. Only five states sent commissioners. The incomplete representative, the complexity of the issues and their implications for aspects other than commerce, persuaded the delegates to adjourn in favor of a convention to be held at Philadelphia the following May, to devise "such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union."

The period from 1774 to 1787 demonstrates the degree to which the idea of a separation of powers was based on the search for administrative efficiency. Nothing illuminates the practical evolution of separated powers so well as the experiences of John Jay and Henry Knox as single executives; the continuity in administrative departments from the confederation to the federal government; and the manner in which the Supreme Court evolved out of its predecessor, the Courts of Admiralty.

In taking over as Secretary for Foreign Affairs in September 1784, Jay strengthened the powers of the office. Congress passed a resolution in 1785, directing that all communications relating to foreign affairs be channeled through the Secretary rather than to the committees vying for control. The treaty power of the President was anticipated in another legislative authorization in 1785, giving Jay full power to negotiate a treaty with Spain. A French minister reported that the "political importance of Mr. Jay increases daily. Congress seems to me to be guided only by his directions." Jay then served throughout the remaining years of the Continental Congress, and even continued in that same capacity as Acting Secretary of State under Washington's first administration, until Jefferson assumed the duties of Secretary of State in March 1790.

The need to administer and protect the Western Territories led to the rejuvenation of the War Department. General Henry Knox was elected Secretary at War on March 8, 1785, and remained in that post until the final days of 1794. Knox, even more than Jay, exemplifies the continuity of executive structures between the old government and the new. Still another example of administrative continuity is the service of Joseph Nourse as Register of the Treasury from 1779 to 1829.

The Supreme Court also has part of its roots in the pre-1787 period. The Continental Congress set up Courts of Admiralty to decide all controversies over captures and the distribution of prizes. Provisions were made in January 1777 for appeal to a standing committee. This committee handled 56 cases over a three-year period. In January 1780 a separate and permanent court was establishing to try all appeals: the Court of Appeals in Cases of Capture. Pending cases were transferred from Congress to this new court. Following the conclusion of the war with England and the signing of the peace treaty, the business of the Court declined, and in February 1786 Congress resolved that the salaries of the judges be terminated. Financed on a per diem basis, the Court continued to function until its last session on May 16, 1787, at the State House in Philadelphia, across the hall from the room in which delegates were assembling for the Constitutional Convention.

## *CONVENTION AND RATIFICATION*

When George Mason reached Philadelphia in May 1787, he had a fairly accurate impression of the changes to be considered. The most prevalent idea, he told his son, appeared to be a total alteration of the federal system. In addition to a national legislature composed of two houses, with full legislative powers over the subjects of the Union, there would be a national executive and a separate judiciary system. As a statement of general principles that would do; but the extent of the separation and the relationship among the three branches were issues that would prove much harder to resolve.

The framers had had the good fortune to watch state governments function over a ten-year period. They saw that paper barriers in the state constitutions were not sufficient to prevent legislatures from usurping executive and judicial powers. They also came to appreciate the administrative bottlenecks in the Continental Congress. Faced with the extremes of an artificial and unreliable separation of powers at the state level, and no separation at all at the national level, the framers offered a subtle formulation: there had to be an overlapping of powers so as to guarantee the continued separation of the departments.

That is not to say that Madison and the other leading figures possessed a clear conception of the separation doctrine. On the contrary, no other principle gave them such trouble. The concept seemed to defy definition, since the problems for which the framers were seeking structural remedies were constantly changing. In the sections that follow, we shall examine more closely the conception of executive and legislative power; the various proposals to shield the

President from legislative encroachments; and the unsuccessful attempt to include a formulation of the separation doctrine in the Constitution itself and later in the Bill of Rights.

### *Attitude toward Executive Power*

According to textbooks, speeches on the floor of Congress, and even Supreme Court decisions, the framers held executive power in distrust. Justice Black, for instance, in striking down President Truman's seizure of the steel mills in 1952, declared that "The Founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times. It would do no good to recall the historical events, the fears of power and the hopes for freedom that lay behind their choice."

This suggests an antagonistic relationship between executive power and individual liberties, yet one does not find such attitudes in the writings of John Adams, Madison, Jefferson, Jay, and others, at least not before 1789. True, the attitude did prevail during the colonial period, when it was automatically assumed that the public interest was enhanced whenever the legislature gained new power from the royal governor, and such distrust of the executive persisted for a few years after independence. But an accumulation of legislative abuses on the state level, combined with a demonstration of legislative incompetence on the national, had created by this time a new outlook toward executive power.

Some of the early precedents for judicial review were in response to legislative encroachments. In 1780, the supreme court of New Jersey refused to carry out an act of the state legislature that limited the jury to six for certain offenses; the court held that the state constitution had intended the common law jury of twelve. In 1782, the Virginia supreme court of appeals reviewed a state act that withdrew from the governor his constitutional right to grant pardons. Without deciding the case in question, the court warned the legislature to stay within its bounds. Judge George Wythe maintained that it was his duty to protect one branch against usurpations by another. If the legislature should attempt "to overleap the boundaries prescribed to them by the people, I, in administering the justice of the country, will meet the united powers at my seat in this tribunal, and, pointing to the constitution, will say to them, here is the limit of your authority; hither shall you go, but no further."

A 1784 study of the Pennsylvania government disclosed numerous examples of legislative violations of the state constitution and bill of rights. The assembly had made unconstitutional invasions of the rights of property, entered homes in the daytime without warrants, deprived persons of trial by jury, and restrained the full operation of the writ of habeas corpus. The legislature intruded upon the judicial branch by dissolving marriages, and infringed upon the executive by granting pardons, making appointments, and transferring executive powers to commissioners selected by the house.

In 1785, when Madison was asked for his ideas on a constitution for Kentucky, he said that while it would be impractical to spell out all the legislative powers, the legislature should be told what it could *not* do. He then ticked off those areas in which legislatures were noted for intruding. The state constitution should expressly prohibit the legislature from "medling with religion—from abolishing Juries—from taking away the Habeas corpus—from controuling the press—from enacting retrospective laws at least in criminal cases, from abridging the right of suffrage, from taking private property for public use without paying its full Value [,] from licensing the importation of Slaves, from infringing the confederation, &c &c." The Virginia executive, he said, was the "worst part of a bad Constitution. The Members of it are dependent on the Legislature not only for their wages but for their reputation and therefore not likely to withstand usurpations of that branch."

At the Virginia ratifying convention in 1788, Edmund Randolph told how the legislature of his state had sentenced to death one of its citizens on the basis of vague reports submitted by a member of the House of Delegates. The citizen

—who did not have the opportunity to confront his accusers or to call for evidence—was put to death. Patrick Henry, that great champion of liberty known to every schoolboy, brushed aside the suggestion that there had been arbitrary taking of life: "That man was not executed by a tyrannical stroke of power. Nor was he a Socrates. He was a fugitive murderer and an outlaw. . . . He was an enemy to the human name. Those who declare war against the human race may be struck out of existence as soon as they are apprehended." And there you have a standard of civil liberty promoted on the state level!

The historical record of legislatures convinced John Adams that a strong executive was needed to protect human liberties. "If there is one certain truth," he wrote, "to be collected from the history of all ages, it is this; that the people's rights and liberties, and the democratical mixture in a constitution, can never be preserved without a strong executive, or, in other words, without separating the executive from the legislative power." Executive power in the hands of an assembly of men would "corrupt the legislature as necessarily as rust corrupts iron, or as arsenic poisons the human body." He deplored the "thoughtless simplicity" that characterized executive power as an enemy of the people.

### *Shielding the President*

In the months prior to the Philadelphia Convention, Madison itemized for Jefferson the essential elements of the new national government, including a reorganization to provide for separate branches. Madison's interest in three branches was drawn more from administrative necessities than from the writings of Montesquieu. Congress had mismanaged its power under the confederation, he told Jefferson, while administrative responsibilities under the new government would be even more demanding. Madison confided to Edmund Randolph his uncertainty as to the details of separated powers, admitting that he had not decided on either the manner in which the executive should be constituted or "of the authorities with which it ought to be clothed." Writing to George Washington shortly before the Convention began, he still had not resolved these questions about executive power.

The Virginia Plan, presented to the Convention on May 29, 1787, provided for three branches but made no reference to "separate and distinct" or to any other formulation of the separation doctrine. In fact, the executive was to be chosen by the legislature and joined with the judiciary so as to form a council of revision. Late in July, the Convention adopted a resolution explicitly affirming the separation doctrine, stating that the three national departments were to be kept distinct and independent, except in specified cases. However, the version presented to the Convention on August 6 by the Committee of Detail omitted the separation clause, and the Constitution was adopted in September without reference to it.

On the relationship between Congress and the President, Madison reminded the delegates that experience had proved "a tendency in our governments to throw all power into the Legislative vortex. The Executives of the States are in general little more than Cyphers; the legislatures omnipotent." The separation set up in the state constitutions had turned out to be a matter of mere parchment barriers, which were incapable of preventing legislatures from drawing other branches into their orbit. The principal anxiety in 1787 was not over executive power, the threat of a dictator, or the emergence of a George III at home, even if some delegates did warn that a single executive would be the "foetus of monarchy." The people of America, James Wilson said in rebuttal, did not oppose the British King "but the parliament —the opposition was not agt. an Unity but a corrupt multitude."

The chief and overriding fear for Wilson was that the "natural operation of the Legislature will be to swallow up the Executive." Gouverneur Morris maintained that the "Legislature will continually seek to aggrandize & perpetuate themselves," while John Mercer of Maryland took it as an axiom that careful construction of the Constitution could obviate "legislative usurpation and oppression."

The veto represented one means of self-defense for the federal executive. Some of the Antifederalists, taking the doctrine of separated powers in its most rigid form, considered the executive veto an encroachment of legislative powers. One critic of the Constitution called it "a political error of the greatest magnitude, to allow the executive power a negative, or in fact any kind of control over the proceedings of the legislature."

Delegates at Philadelphia did more than accept the executive veto as a necessary check on legislative ambitions; they also proposed that it be shared with the judiciary. To those delegates who denounced this as a patent violation of the separation doctrine, Wilson replied that the executive and judiciary should share the negative, for "they cannot otherwise preserve their importance against the legislature." Madison agreed, urging that the judiciary be introduced in "the business of Legislation—they will protect their Department, and uniting wh. the Executive render their Check or negative more respectable."

Later, when the proposal for joint revisionary power was still under consideration, Madison argued that a blending of the two departments would operate as an "auxiliary precaution" in preserving a lasting and durable separation. That line of reasoning must have baffled those who adhered to strict separation, but Madison preferred to assure separation in practice by deviating from it in theory whenever necessary. Merely to declare a separation of powers, he said, was not sufficient, since experience demonstrated the need for introducing "a balance of powers and interests, as will guarantee the provisions on paper."

### *Ratification*

After the convention had adjourned, Madison confided to Jefferson that the boundaries between the executive, legislative, and judicial powers, "though in general so strongly marked in themselves, consist in many instances of mere shades of difference." He set out in the *Federalist Papers* to contrast the overlapping of powers in the Constitution with the abstract and impracticable partitioning of powers advocated by some of the Antifederalists. Few men can compete with Madison in lucidity and precision of expression, yet he reflected in Federalist 37 on the inherent shortcomings of our language. Just as naturalists had difficulty in defining the exact line between vegetable life and the animal world, so was it an even greater task to draw the boundary between the departments of government, or "even the privileges and powers of the different legislative branches. Questions daily occur in the course of practice, which prove the obscurity which reigns in these subjects, and which puzzle the greatest adepts in political science."

The bulk of Madison's analysis of the separation doctrine appears in Federalist 47. He upheld the basic principle of the maxim that tyranny resulted whenever three branches were concentrated in the same hands, but he charged that the maxim had been "totally misconceived and misapplied." Montesquieu, he said, could not possibly have meant that the three powers of the British government were actually separate. The executive magistrate formed a part of the legislative power by making treaties with foreign sovereigns, and he had a share in the judicial power by appointing the members of the judiciary, as well as having power to remove them. Moreover, one house of the legislature formed a constitutional council for the executive, had judicial power in the impeachment process, and was invested with the supreme appellate jurisdiction in all other cases. The judges could not vote in legislative actions, but were permitted to participate in the deliberations.

Madison then turned to the state constitutions for further support, pointing out that in no instance were the several departments of power kept absolutely separate and distinct. The intent of Montesquieu, Madison concluded, could be no more than this: "that where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted." As we shall see, the broadness of that definition did not satisfy Madison for long.

By the late 1780s, the concept of checks and balances had gained dominance over the doctrine of separated powers, which one contemporary pamphleteer called a "hackneyed principle" and a "trite maxim." Yet several delegates at the state ratifying conventions expressed shock at the degree to which the Constitution had mingled the departments.

"How is the executive?" cried one delegate at the Virginia ratifying convention. "Contrary to the opinion of all the best writers, blended with the legislative. We have asked for bread, and they have given us a stone." The Constitution was attacked at the North Carolina ratifying convention for violating the maxim whereby the three branches "ought to be forever separate and distinct from each other." Overlapping of departments also provoked criticism in Pennsylvania. Opponents of the Constitution maintained that the Senate's judicial power in impeachment, as well as the executive's legislative power in making treaties, constituted an "undue and dangerous mixture of the powers of government." A lengthy quotation from Montesquieu was introduced to demonstrate the dependence of freedom and liberty on a separation of powers.

These three states insisted that a separation clause be added to the national bill of rights. Virginia's recommendations in June 1788 included the clause: "legislative, executive, and judiciary powers of Government should be separate and distinct," while Pennsylvania and North Carolina offered their own versions of a separation clause. Congress compiled a tentative list of restrictions on the national government, among which was the following: "The powers delegated by this constitution are appropriated to the departments to which they are respectively distributed: so that the legislative department shall never exercise the powers vested in the executive or judicial [,] nor the executive exercise the powers vested in the legislative or judicial, nor the judicial exercise the powers vested in the legislative or executive departments."

Surprisingly, Madison supported that clause, but this does not mean that he had suddenly embraced the notion of pure separation. What he feared was that additional blending, resulting from encroachment, would benefit the legislature and weaken the executive. In the House debates in 1789, he opposed Senate participation in the removal power because that might reduce Presidential power to a "mere vapor." The unity and responsibility of the executive, he said, were intended to secure liberty and the public welfare. Join the President with the Senate in the removal power, and the executive becomes a "two-headed monster," deprived of responsibility.

So concerned was Madison about the independence of the executive branch that he began to use the kind of abstract phrases he had earlier rejected. For now he was to say, "if there is a principle in our constitution, indeed in any free constitution, more sacred than another, it is that which separates the legislative, executive, and judicial powers." However, from the context of this remark, we know that Madison was presenting separation of powers not in its rigid form, but was using it rather for the explicit purpose of opposing legislative participation in the designation of officers. Once again he expresses his concern for the independence of the executive branch: "The Legislature creates the office, defines the powers, limits its duration, and annexes a compensation. This done, the legislative power ceases. They ought to have nothing to do with designating the man to fill the office. That I conceive to be of an executive nature."

These debates in the House help explain Madison's support for the separation clause in the bill of rights. The Senate journal, unfortunately, tells us very little about the discussion on that clause. It was among seventeen constitutional amendments sent to the Senate. The members struck it from the list of proposed amendments on September 7, 1789. A substitute amendment (to make the three departments "separate and distinct," and to assure that the legislative and executive departments would be restrained from oppression by "feeling and participating the public burthens" through regular elections) was also voted down. Three members of the House, Madison among them, met with the Senate in conference to reconcile their different lists of amendments. In the days that followed, the list of seventeen was cut to twelve. Among the deleted amendments was the separation clause.

It is widely argued that the separation doctrine, while not explicitly stated in the Constitution, is nevertheless implied. Perhaps so, but that does not take us a step closer to understanding exactly what is implied or to what degree the departments must remain separate. Similar questions are raised when one states that the framers believed in a separation of power. No doubt they did, but for what purpose? With what objective in mind?

From the discussion here, and the material presented in the Appendix, it seems fair to say that the framers shared a desire for greater administrative efficiency and more reliable governmental machinery. Direct experience with state government and the Continental Congress convinced them of the need for a separate executive and interdepartmental checks. Chief among their concerns was the need to protect against legislative usurpations and to preserve the independence of the executive and judicial branches. Those were the dominant thoughts behind the separation of powers, not the doctrine of Montesquieu, fear of executive power, or a basic distrust of government. If the framers had wanted weak government, they could have had that with the Articles of Confederation.

Had the separation clause been accepted by Congress and ratified by the states, its primary effect would have been a warning against departmental encroachments. It would not have affected the blending of departments and powers already sanctioned by the Constitution, nor would it have prohibited the delegation of legislative powers to the President. Congress was no more capable in 1789 of administering the nation's business than it had been during the previous decade. The complexities of national growth, the need for economic regulation, and new international responsibilities all provided fresh incentives for granting new powers to the executive branch.

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# President vs. Congress

## Does the Separation of Powers Still Work?

John Charles Daly, moderator

Henry O. Brandon
Lloyd N. Cutler
Laurence H. Silberman
James Q. Wilson

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JOHN CHARLES DALY, former ABC News chief and forum moderator: This public policy forum, part of a series presented by the American Enterprise Institute, is concerned with whether the historic separation of powers among the executive, legislative, and judicial branches of the government, enshrined in our Constitution, encourages stalemate and inefficiency and is potentially disastrous in this modern world. Our subject, "President vs. Congress: Does the Separation of Powers Still Work?"

Nearly 200 years ago, our Founding Fathers argued in the *Federalist Papers* that "the accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. . . . The preservation of liberty requires that the three great departments of power should be separate. . . ."

The underlying argument elsewhere in the *Federalist Papers* states, "The great security consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. Ambition must be made to counteract ambition."

Nearly 100 years ago, the Federalist concept was hotly challenged by one who would later be president of the United States, Woodrow Wilson. Wilson, denouncing the almost absolute power of the standing committees of the Congress and the overriding discipline of an external authority—the political party to which the majority of the Congress owed allegiance—called for cabinet government. He defined "cabinet government" as simply giving the heads of the executive departments, the members of the cabinet, seats in the Congress with the privilege of initiating legislation, and, he added acidly, "some part of the unbounded privileges now commanded by the standing committees."

In addition, Wilson argued that cabinet government necessarily involves the principle of ministerial responsibility. "According to their policy, and how it stands or falls," he said, "the ministers stand or fall. If defeated in both houses, he, the minister, would naturally resign, and resignation upon defeat is the essence of responsible government."

Still, in this parliamentary design, he, who was to be president, yet bent a knee to the principle of separation. He noted that it would be plainly at variance with republican principles to allow the president to choose whomever he pleases to the cabinet, thus making them ex officio members of the Congress, because it would give him the power to appoint members of Congress. "Rather," he said, "the highest order of responsible government could then be established in the United States only by laying upon the president the necessity of selecting his cabinet from among the number of representatives already chosen by the people, who would, of course, retain their seats."

Thus, in essence, was launched the debate in modern times on reform of our system of government toward the British parliamentary system, modifications of which are general in Western Europe and in Japan. The turmoil and frustrations of these past years, both in the domestic and foreign affairs areas, and urgent demands for more effective and efficient government, have renewed debate on the question of whether the separation of powers still works.

To lead us through this labyrinth, we have a highly expert panel: Mr. Henry O. Brandon, foreign correspondent, war correspondent, diplomatic correspondent, and now Washington bureau chief and associate editor of the London *Sunday Times*. Mr. Lloyd N. Cutler is a distinguished Washington attorney with broad experience on government and academic boards and commissions, capped by service in the White House as counsel to President Carter. Mr. Laurence H. Silberman, also a distinguished Washington attorney, has served as deputy attorney general of the United States, ambassador to Yugoslavia, undersecretary of labor, and was formerly a senior fellow at the American Enterprise Institute. Mr. Silberman is now an executive vice-president of the Crocker National Bank in San Francisco. Dr. James Q. Wilson, former director of the Joint Center for Urban Studies of MIT and Harvard, is a member of AEI's Council of Academic Advisers and is the Henry Lee Shattuck Professor of Government at Harvard.

Gentlemen, I will pose the same question to each of you: Is our traditional 200-year-old separation of powers an anachronism, made obsolete by the technology, mass, and speed of communications in modern society?

LLOYD N. CUTLER, counsel to President Carter: The separation of powers is an anachronism, and one in need of some revision. Along with Woodrow Wilson, I believe we do need to do a better job of forming a government in the parliamentary sense—one that can legislate and execute a balanced program for governing. With every succeeding administration, this need is becoming more acute.

The fault is not personal to any president or legislator. It is the structure of our Constitution and, in particular, the rigid separation between the legislative and the executive branches that prevent us from doing significantly better. It is time for all of us to start pondering and debating, in forums like this one, whether to correct this structural fault, and if so, how.

LAURENCE H. SILBERMAN, former deputy attorney general, ambassador to Yugoslavia, and undersecretary of labor: I disagree. I believe today, as people believed 200 years ago, that the separation of powers doctrine is an enormously important protection for American citizens. The separation of powers among the three branches of government makes it very difficult for the government to accrue power, and it is as desirable today as it was 200 years ago to make it difficult for the government to accrue power, because that is a potential threat to the well-being of citizens.

HENRY O. BRANDON, Washington bureau chief, London *Sunday Times*: I want to make it clear from the start that I do not mean to propose the imposition of the British monarchy or the British parliamentary system here. I am in favor of reforms of the present American political system. It is a system that is today the oldest and the least changed in the world. The office held today by the American president is far more like the office held by President Washington than that held by Queen Elizabeth II is like that held by George III.

The United States today is the leader of the free world. As such, it has to undertake some very major and important commitments. If the president cannot be sure that he can adhere to those commitments, it becomes very difficult for the United States to be recognized as a world leader.

JAMES Q. WILSON, Henry Lee Shattuck Professor of Government, Harvard University: To paraphrase Winston Churchill, the separation of powers is a poor philosophy of government, except in comparison with all others. It has its defects. Those will probably come out in our discussion, perhaps notably with respect to the conduct of foreign affairs, but it has the virtues of those defects, as well. It facilitates scrutiny, sometimes at the expense of action; it protects the particular and the individual, sometimes at the expense of the general. But it has brought about the capacity to engage in great national commitments when important national emergencies arise, and above all it has permitted a union to be created out of great diversity by providing separate constitutional places on which individuals could focus their loyalties.

MR. DALY: Mr. Cutler, your article in *Foreign Affairs* in the closing months of 1980, entitled "To Form a Government," has brought debate on the separation of powers to center stage. You wrote particularly of the separation of powers between the legislative and executive branches. You said, "The separation of powers between these two branches, whatever its merits in 1793, has become a structure that almost guarantees stalemate today."

In very broad brush, you suggested that we should have candidates for president, vice-president, and Congress run as a team in all election districts; require, or allow, half of the cabinet to be members of the Congress; establish a six-year term for the president, the vice-president, and the members of the Senate and the House; and establish procedures for the president or Congress to be able when stalemates set in to call for general elections for the remainder of the current term, this election process to take no more than 120 days. Would you now develop these ideas?

MR. CUTLER: I did not advocate any of those constitutional revisions you enumerated—I simply tabulated them as ideas that had come to the fore. My central proposition is that we need to study and appreciate, more than we have, the costs of the separation of powers between the legislative and the executive branches. These costs need to be weighed alongside the admitted benefits. In 1980 and in the decades ahead, if not at some earlier time, we need a balanced program for governing, rather than a hodgepodge program for governing. Government has any number of important social and economic goals: controlling inflation, providing jobs, increasing productivity, ensuring social justice and social welfare, providing for our national defense, accepting America's role today as the guardian of the entire free world, protecting the environment. Not all of those goals can be pursued in full vigor at the same time, even in a country as rich as this one, and the art of governing has become one of striking the proper balance among those goals. This would happen if a balanced program were presented to the electorate by candidates who, if elected, could then proceed to legislate and execute that balanced program.

My thesis is that today it is impossible for the elected president or the elected majority in either house or both houses of Congress to legislate and execute a balanced program. Given the structure of the presidency and the Congress and the many things that have happened to our party system—the growth of single-interest political groupings, the well-meant reforms of Congress—there is no way the policies adopted can be a balanced set of policies that anyone elected will endorse. The president does not endorse the package that emerges; it is not his program. It is not the program of a legislative majority. It is a program resulting from a series of individual, ad hoc majorities, each pursuing its own policy on each particular issue as it arises.

As a result, when failure comes, when the effort to pursue these various policies gets out of balance, we have no one to hold accountable. The president cannot fairly be blamed, because his program has not been adopted. The majority of Congress, or the minority, cannot fairly be blamed; the majority differs from one measure to another, and the minority does not have any particular program of its own.

This is a basic problem of American government, not shared by parliamentary governments, including those with writtten constitutions. Ironically, we helped to write many of those—notably the constitutions of Germany and Japan—in the postwar era. It may be that some of the deficiencies that have resulted—that is, the lack of power in any one official or in any group of elected officials to enact a balanced program and execute it—could be cured by nonconstitutional measures. Nevertheless, they are structural problems that every president elected in this century has had to endure and that every president, with the possible exception of FDR in the face of two great national crises that helped to bring us together, has been unable to solve.

MR. SILBERMAN: Given one axiom or one hypothesis, I would agree entirely with Mr. Cutler. If we could find the balanced program that we could all agree upon, he would be absolutely right. In fact, however, there is no such thing as a balanced program. There is one program, another program, and still another program.

Mr. Cutler cites in his article an example of an "excellent" piece of legislation, the SALT treaty, which all people would recognize was "balanced." Yet, a significant minority, perhaps a majority, in this country thought it was awful and thought the president behaved imprudently in negotiating it. He had been signaled at the very outset, when forty senators voted against the confirmation of his arms control negotiator, that he was going to have a very difficult time getting the SALT treaty through the Senate. Had he been more prudent, he might have come up with a different treaty and might have gotten it through.

We cannot accept the proposition that what President Carter thought was balanced—a treaty that was worked out through a bureaucratic clash between various executive branch agencies—was superior in any way to legislation or treaties that would come out of the process of the executive proposing and the Congress compromising and legislating. In other words, there is no validity to Mr. Cutler's assertion that some magic kind of balanced program will come forth from an executive or a president if you just leave him alone.

DR. WILSON: Mr. Cutler has a philosophy of governance that is at odds with what the framers of the Constitution embodied in that document. To Mr. Cutler good policy or good government is the product or the act of a single will. It is an act of management, of allocation, of balance. The framers, by contrast, thought that good policy could be recognized when it appeared, but to achieve it in the real world required a process of ambition counteracting ambition, leading thereby to the formation of coalitions—coalitions of partial, self-interested groups. They hoped the Constitution would lead these coalitions to emerge only on the principle of the common good.

This has not always happened, but it is a first approximation of their effort. The difficulty and magnitude of our problems are admittedly great, but no greater than the problems other presidents in past centuries have had to deal with, and intellectually it is unlikely that we can devise a program that corresponds to a theory of governance based on the act of a single will or intelligence. Politically, it is unlikely that we can devise institutions that could translate that will, if formulated, into a desirable result.

Consider Great Britain. With due respect to Mr. Brandon, I do not see that great steady hand, that even philosophy of governance, that striking for balances emerging from the parliamentary system. Great Britain has nationalized and denationalized industry at a dizzying rate. It has perhaps the worst labor-management relations of any western democracy. It has had extraordinary difficulties in deciding whether it will remain part of the European Community. I have profound sympathies with Britain's difficulties, because we would have had as many; those difficulties do not suggest that, once the appropriate parliamentary devices are in place there is a will, which, when revealed, will produce altogether good effects.

MR. BRANDON: First of all, I want to take issue with those who have blamed President Carter for these constitutional difficulties. It is also often said that the problems that have arisen are all the aftermath of Vietnam and Watergate. Neither is the case. As a practical example, in 1962, President Kennedy asked Congress for a tax cut; he labored for months, but he could not get it. It happened that I saw Prime Minister Macmillan at the time, in London, and he said to me, "You mean to say that if the American president wants a tax cut, he can't get a tax cut?" I said, "Yes, that's the case." He said, "You know, if I need a tax cut, I can get it within a month."

If a president decides that a tax cut is the right thing for this country, but he cannot get a tax cut, how on earth can he do the best for his country? How will Mr. Reagan be able to govern if he finds himself in a similar position? I do not know whether he will get his tax cut, and you cannot tell me whether he will get that tax cut.

It is very difficult for any government in this country to plan ahead. The country may want a long-term policy that stretches over two, three, or four years, particularly in the economic field, but if presidents cannot set and accomplish long-term goals, how can they govern?

MR. DALY: Franklin Roosevelt, Harry Truman—despite election year invective—Dwight Eisenhower, and Lyndon Johnson all managed to work effectively with Congress under varying conditions. There is no intent here to focus on President Carter, because we are really talking about the problems of the presidency with respect to the issue of separation of powers. Is it possible, however, that policy failure and stalemate, as we have identified it in our times, depend to a high degree on the incumbent in the White House?

MR. SILBERMAN: Of course. I hestiated to take up Mr. Cutler's example of President Carter's governance during the last four years, because the election is over and we should not be partisan anymore. I do believe, however, that President Carter brought a good part of his problems upon himself.

MR. CUTLER: I just hope we can have a repeat of this forum three and a half years from now, or perhaps earlier. [Laughter.]

MR. SILBERMAN: You have a guarantee. Incidentally, President Reagan's proposal for a tax cut is a balanced program. You will accept that, won't you? [Laughter.]

MR. CUTLER: I would like to see President Reagan and the elected majority—although unfortunately one does not exist—have the opportunity to carry out the Reagan programs, or the Republican platform programs.

MR. SILBERMAN: I understand your point. President Carter, however, governed very much in the philosophy of Lloyd Cutler's article. He took each problem by itself, like an ad hoc engineering problem, and felt there was a "right" solution, or to use Mr. Cutler's word, a "balanced" solution. He would arrive at this solution and spring it on the Congress, and then watch with astonishment when the Congress either rejected it, chewed it up by amendment, or ignored it.

The fact is that we want something more from a president than an intellectual will or the ability to promulgate messages. We want a savvy politician who can form consensus and who also comes to the presidency with some kind of coherent notion of what he wants to do with the presidency. After all, that is all he has, the presidency. If anyone goes back and looks at Jimmy Carter's campaign promises, despite some of the allusions in Lloyd Cutler's article, it will be very difficult to find that coherent program. He came to office without a clear idea about doing anything except reorganizing the government and moving boxes around and theoretically creating fewer agencies, and he ended up creating more. Because he had no coherent idea of what he wanted to do and because he disdained the political process—the process by which you build consensus—it was inevitable that he would fail. Finding solace for that failure in the structure of the Constitution seems to me to be whistling in the dark.

MR. CUTLER: If we are going to get political, I am surprised, Mr. Silberman, that as a veteran of an administration of one president who was unable to complete his term, the only one who resigned in history, and another president who was unable to win an election, you would make remarks of that kind. The issue is whether anyone's program or any majority's program can be adopted. Is there anyone you know who served in the Ford or the Nixon administration who would totally endorse the programs that were followed during his administration? I submit that you will not find anyone. President Ford, again and again, was ready to criticize the Democratic Congress that did not allow him to carry out his programs.

One of the oddest things, one that helps to prove my point, is that we have a system not only in which the presidency and the majority in the Congress have been held by opposite parties for half of the last eight administrations—and this is also true for the new administration—but even when they are held by the same party, it does not seem to make any difference.

The opponents of SALT II had no balanced program of their own for governing. They might have had a way to go about controlling the arms race that they thought was best, but they had no solution as to how that was to be balanced with the other problems of the budget and unemployment and social justice and social security. No one is prepared to endorse the outcome of what our combined mélange of legislators and president comes up with. Essentially, it goes back, as I mention in my article, to old Joe Jacobs, the fight manager, who said, "It's every man for theirself."

As discussed in a recent AEI book, *Presidents and Prime Ministers*, when we speak of how the president ought to be able to manage the government, there is no one government to manage. There is a series of subgovernments pursuing single interests of one kind or another, and a new majority has to be formed on every single issue.

I would like to come back to Dr. Wilson's point that my thesis is at odds with that of the framers. I would agree with that, because the framers did not want a government that could manage our lives and manage all the problems we face in the world. If we believe that government should do the very least possible, not only in domestic affairs but in foreign affairs as well, the framers had a very good system for doing that.

I am not speaking of the act of a single will. I am not urging more power for the president and less power for the Congress. What I am urging is that the president and the elected majority in the Congress, in one way or another, be made to share the same political fate and take joint responsibility for forming a balanced program, carrying it out, and living or dying politically by the results. That is the central thesis.

How to accomplish that is a very, very difficult proposition, I admit. Unless it is accomplished, however, we will have stalemate and a continued mélange of policies that no elected official will endorse. This is an unsatisfactory method of governing ourselves in this century, especially with our need to react promptly to new events and crises all over the world that are no longer within the reach of American military power.

Dr. Wilson: I grant some force to your argument with respect to the conduct of foreign affairs, but in general it does not correspond to what the American people expect. They do not wish to have an opportunity to vote yes or no on a party's cohesive performance in office, in which it takes responsibility for the policies that have been put in place, because the American public does not exist as a public. It is a collection of separate publics that have discovered, or would readily admit if it were pointed out, that if they have to vote yes or no on a comprehensive set of policies, they cannot do so. They are torn with too many internal contradictions.

During the last 200 years, the people more or less successfully have modified policies by taking up the various constitutional opportunities presented to them—off-term elections for the House, six-year terms for the Senate, presidential elections, the congressional oversight process, the lobbying process, campaign contributions—as a way of giving expression to particular preferences, which the unlucky folk in Washington must cope with and try to put together into a coalition around each issue. This creates great difficulties for those who govern, difficulties so great that many persons, especially those associated with activist presidents, have regularly published books about "the deadlock of democracy." Whenever the deadlock is broken, however, as they allege it has been in recent years, they then write about the imperial presidency. That does not seem to be desirable, either. I agree that an imperial presidency is a mistake, but we have not had an imperial presidency, with perhaps a few exceptions.

The deadlock of democracy is not a deadlock at all; in the 1930s, the 1960s, and the 1970s, our system produced an extraordinary outpouring of legislative innovation because certain ideas were sufficiently coherent to permit change to occur.

The people are unwilling to vote simply yes or no in a national referendum about the record of a party because the people are too various. They want these diverse opportunities to peck and chip and constrain in order to moderate policy. If we compare American policy with that of most parliamentary democracies, its leading characteristic is its moderation. There are many policies I do not approve of and regularly call immoderate. Taken as a whole, however, we tend to temper the enthusiasm of temporary majorities by the need constantly to reformulate that majority.

MR. DALY: Mr. Brandon, to get to the possibility, which Mr. Cutler raised himself, that the reforms—if reform is needed—may be achieved without constitutional change, you have expressed approval of Senator Fulbright's argument that the method of selecting the American president reinforces the belief held around the world that our society is doomed by its internal contradictions. Senator Fulbright's major reform proposal is for the legislature to select the executive from among its own members.

Senator Moynihan and Representative Reuss, two congressional Democractic leaders, espoused putting members of Congress in the cabinet, which is something Mr. Cutler put out for debate and discussion. For the executive branch to become part of the legislative function would require a constitutional amendment. It has been suggested, however, that if they were unpaid members of the cabinet, with no specific portfolio, members of the Congress could be in the cabinet without any violation of the Constitution.

Do you see in these proposals any cure for what you consider our problems of conflict between the powers of the two relatively great branches of government?

MR. BRANDON: If there were a cure, it would create an imbalance. So, again, we have to assume that whatever reforms are introduced will improve the situation, but they will not solve it.

I have not actually endorsed Senator Fulbright's ideas. I would like to see, for the beginning at least, reforms introduced that can be achieved without constitutional amendments. If the leaders of the House and the Senate were brought into the policy-making process at a very early stage and made participants, that in itself would give the government's policy, and the impression that the policy-making creates for the public or for the world, a much greater stability and predictability.

I do not want to defend the parliamentary system, because that system would not work in this country. Nevertheless—I am so tempted by Dr. Wilson's needles—the British government accepted membership in the European Community and, although there has been plenty of opposition to it, it is still a member of the European Community. The British government signed a treaty and then acted on it. The American president signed, say, the SALT treaty, but cannot act on it. Unless the word of a president can be relied on and can be reinforced by the support of the principal leaders in Congress, it will be very difficult for the United States to carry out the kind of world leadership that everybody expects from it today.

Mr. Silberman: Mr. Cutler accurately stated the fundamental question, which lies at the heart of this issue. If we want government, all of government, to have greater power, then his suggestion makes sense. It is quite clear that if we move toward fusing aspects of the executive and legislative branches, as he wishes, we would create greater power for the government, as a whole. This is fundamental to the separation of powers. The American democracy, unique in the world, makes it very difficult for government to accrue power. The only way the government can accrue power, at least theoretically under our Constitution, is by legislation, by treaty, or by constitutional amendment.

Now, let us put judicial imperialism aside for a moment. It is a problem I talk about a lot, but it is not really the focus of this discussion. I would note, parenthetically, that Mr. Cutler calls for a constitutional convention on separation of powers; and although I totally disagree with him on his concern about the executive and the legislature, I agree that such a convention would be a good thing, because the judiciary has behaved in imperial fashion. Going back to my point, however, the American democracy was set up with the deliberate intention of making it very difficult for the government to accrue power. Government cannot get power without a consensus in the United States. Mr. Cutler thinks government ought to be able to get the power with a bare majority of some group, but I think the founders were right that the thing to worry about is governmental power, for the most part. Therefore, we should make it difficult for the government to accrue power.

The one area in which Mr. Cutler argues most strongly is in foreign affairs. He says the government—and by the government he means the executive branch—at least ought to be able to move more rapidly and without the constant trouble that a treaty ratification process causes. I go back to the point I made earlier on the SALT treaty, which is his major foreign policy example. If President Carter had negotiated a SALT treaty that he knew would command a consensus in the country and a majority of the Senate, he could have had it ratified. Instead, he chose to negotiate what he perceived to be a balanced program—that is to say, one that sprang from his mental processes and that the Senate should have taken because it was "right." That is just not politics; that is not American democracy.

Mr. Cutler: When you say the president had a choice between negotiating a SALT treaty that a majority of the Congress would support and the one he did negotiate, you are assuming that Mr. Brezhnev would sign whatever Mr. Carter proposed. I leave that aside. I also leave aside that the SALT treaty was 85 percent—Mr. Reagan said, in this campaign, 90 percent—negotiated by Secretary Kissinger and President Ford.

MR. SILBERMAN: It was the other 10 percent that was obnoxious. [Laughter.]

MR. CUTLER: It was the 10 percent that Ford could have finished in 1976. He did not because he feared the Reagan attack in the convention. That is the fact of the matter.

But let's go on to something that everybody in this audience would agree on, and that is the budget. If there is any critical element to running a government or running an economy, it is a budget. We are the only democracy in the world, that I know of, in which the legislature is able to enact an aggregate budget and appropriations greater than the amount proposed by the leader of the government. We consistently have a budget with a higher deficit than the president wants, than the majority leaders want, than every member of Congress wants, because we cannot get together on a single budget.

The result of the mélange of interests that has been described makes us essentially ungovernable. We cannot have a budget—the central feature of modern government and of a modern economy today—for which either the elected president or any of the 535 elected members of the Congress will take responsibility. They all want a lower budget, but with more for their programs and less for somebody else's programs. That is not a government and that is not a responsible way of conducting ourselves in this latter half of the twentieth century.

MR. BRANDON: It comes down to the simple fact that there has to be someone who can define and determine the national interest. A body like Congress, in its composition today—not as it was about 100 years ago—cannot do that. It cannot formulate, for instance, a foreign policy. It cannot formulate a budget. A nation must have someone it can trust, and after all the president is elected by the people and has a vast variety of counselors. Assume that he can make mistakes, but maybe his mistakes, in the end, are less perilous than having no policy or having a hodgepodge of policies.

DR. WILSON: I wish we would not agree so readily that America has a foreign policy that is a hodgepodge. I disagree with many elements of it and certain tendencies of it, but we are speaking now of a country that won World War II, that put in place European reconstruction, that rearmed the West, that created the NATO alliance, that gave aid to Greece and Turkey, that established a ring of alliances that gave some hope to democratic regimes in all parts of the world, and that fought Communist interventionism when it was not in our material interests to do so. Although we have surely made mistakes in the pursuit of all these objectives, that is not such bad policy. Would a stronger president have been a better one? Did General de Gaulle have a better policy when he was president of France, with certainly all the power he could have wished?

With respect to the budget, I agree that the budget cycle, which Mr. Cutler accurately describes, proves conclusively that the public interest differs from the summation of private wants (something that my colleagues in political science like to deny, but this fact establishes it). The question is, How do we deal with that? I am not sure it is by having a stronger president who can say, "This is my budget, take it or leave it." President Johnson did this during the Vietnam war and decided to print money to finance the deficit.

Perhaps we must have a sharper restriction on the budget. Though we have not mentioned it so far, if constitutional revision is to occur, perhaps we should consider a budget limitation linked to gross national product and public expenditures.

MR. DALY: We can all agree that the proposals Mr. Cutler put up for debate—and I stress "that he put up for debate"—would require constitutional change. Let us examine further the changes that might work but do not require amendment of the Constitution. Senate Republican leader Howard Baker, for instance, would like to see an official liaison presidential office on Capitol Hill and the appearance by the members of the cabinet before one or both houses of Congress at regular intervals to answer questions about executive policy. This proposal in years past has been generally endorsed by both President Carter and Vice President Mondale. Could that be a way to get consensus on a presidential program and, ultimately, its passage?

MR. CUTLER: All of these proposals are improvements, but they fall short of reaching the heart of the problem, which is shared political fates and responsibility for the majority of the legislature and the president. We need a way of doing that. In this election, of course, it is true that some of the Democratic senators shared the same political fate as the president. Nevertheless, it remains a fact that the president was defeated by some 6 million or 7 million votes, and a Democratic House was elected by a comfortable majority.

MR. SILBERMAN: Yes, but an important point to keep in mind is that a majority of people who voted for members of the House of Representatives voted Republican—50 or almost 51 percent. It is because of districting, gerrymandering—and I do not mean to use this in a pejorative way—that the House has a Democratic majority.

MR. CUTLER: Take a broader sweep of history. We do this again and again. For half the time of the last seven, now eight, administrations, we have put the Congress in the hands of a different party than the presidency.

One suggestion that has been made, one that could be accomplished without a constitutional amendment, is that, either by the will of one or both parties or by a congressional preemptive statute, there should be a single primary or state convention time for the nomination of candidates to the House and Senate. Once nominated, those candidates, together with the holdover senators of the same party, would meet in a convention to nominate candidates for president and vice president, who might very well come from among their number.

That suggestion is very close, as I understand it, to the original development of the parties when the Democratic–Republican, Federalist, or Whig, members of the sitting House and Senate met together to choose the candidates for president and vice president of the party.

MR. DALY: I believe we have broadly presented the subject and also the issues concerned, and that it is now time to go to the question and answer session. May I have the first question, please?

MEL ELFIN, *Newsweek* magazine: Mr. Cutler suggested that if the president and the Congress reach a stalemate, under his system, they would necessarily have to resign and have new elections. How would that contribute to the efficiency of government and speed in dealing with foreign policy issues? Would it not put us under a kind of Fourth Republic?

MR. CUTLER: I did not suggest any of the proposals that are listed. I simply tried to catalog them. The present French constitution, as you may know, empowers the president to call for new elections in the Parliament, not the other way around.

One possibility that has been suggested is a two-way street. The president could exercise a constitutional power to dissolve the Congress and call for new elections; a majority, or perhaps two-thirds, of the Congress, only in that event, could call for a new presidential election at the same time.

That power is a sort of political nuclear weapon, but its existence might break many stalemates because of the distaste of the members of Congress for having new elections. That is the theory of it. Of course, it could only work if we had an electoral system—and we would have to adopt it as part of any such change—that could produce a new government, as in Britain or in the constitutional parliamentary systems, within thirty to sixty days. The incumbent government would stay in until the election is held.

DR. WILSON: Once you start unraveling this sweater, it all starts coming apart. You cannot change one part of the system without, as Mr. Cutler has indicated, thinking about changing all parts of the system. If we have the president calling a congressional election or the Congress forcing a presidential election, we have to change the party system. This means we have to change the degree of control the national government has over state governments, because ultimately they control the local party systems. We have to force a different kind of primary or convention system. This alters the relationship between the state governments and the parties. I cannot, because I lack the wit, imagine all of the additional permutations that are implied. My point is simple: There are no simple changes in the Constitution.

MR. ELFIN: Also, Mr. Cutler, does it not work only in a system where the party is unified over principle, where there are smaller constituencies, and in more unified, homogeneous countries? In our country of 220 million people and so many diverse political interests, our political parties really could not sit down and subscribe to a single body of values. Look at the fighting that goes on over a political platform in a convention, which is the party's least common denominator. It would be hard to find a group of congressmen and a president of either political party who could sit down and agree on a balanced program. It would be exceedingly hard and would lead to incredible instability.

Concerning what Mr. Wilson said, if we look at the separation of powers, does it not also apply to fifty state governments in our country, which also have a comparable kind of system and not a parliamentary system? Would you suggest that they move to a parliamentary system?

MR. CUTLER: To take your last question first, other federal systems—the German system and the Canadian system—have parliamentary governments at the top. Of course, they have repetitions of it at each level. Those governments work quite well.

It is quite true that the federal system is an added complication for us, one in which the virtues may still outweigh the costs. For any of these various measures, however, the whole point is to induce the kind of shared political fate between the majority of legislators, as a group, and the president that would lead them to agree on a balanced program. If we are to accept the proposition that we are so diverse we cannot agree on a balanced program and, therefore, we cannot have one, I really fear for what will happen to this country. If we cannot have a balanced program, we cannot control our budget.

My main thesis, though, is not to advance any one of these solutions. I agree that each one of them has a lot of problems to it. My main thesis is to try to establish the proposition that we need to do better in forming a government, that we do not do it well today, that structural problems stand in the way—particularly the lack of a shared political fate between the legislators and the president or the candidate for president—and that this is what we need to focus on.

MR. SILBERMAN: I do not think we could define a balanced program. That is a very illusory word. It suggests some kind of objective standard and there is none. Mr. Cutler's balanced program would be anathema to me.

To go back to Mr. Brandon's point, we cannot trust anybody, even the president, to define the national interest—except me, and I do not think you would give me that constitutional power. [Laughter.]

MR. CUTLER: It is not a question of whether Program A is better than Program B, whether more defense and less social welfare is better than less defense and more social welfare, or whether we ought to lower taxes to increase productivity or have the federal government do something. It is that *somebody's* program is given a chance. What we have today is *nobody's* program. No one is prepared to endorse what we have today. I will wager you anything that President Reagan will not be able to carry out his program, however he chooses to define it. He will say, "You can't blame me," and the Congress will do the same thing.

MR. BRANDON: I only want to add that Mr. Elfin defined the reasons why the British parliamentary system could not be applied in this country.

MR. DALY: The diversity of our society?

MR. BRANDON: Yes.

WALTER BERNS, American Enterprise Institute: Mr. Cutler, I have a question for you, too. It seems to me that you exaggerate the difficulties the president faces, both in foreign policy and in domestic policy. By that, of course, I mean your suggestion that he faces difficulties that are part of the system of separated powers and that these difficulties really prevent him from doing what has to be done at any particular time.

But take two questions, one of foreign policy, one of domestic policy, arising during the last administration when you were there. Could it fairly be said that it was the separation of powers that prevented President Carter from responding properly at the time the hostages were seized? And, in the field of domestic policy, when you complain about the inability to get a decisive national-interest budget, can it fairly be said that it was the separation of powers that prevented President Carter from getting a budget adopted? If the answer to that is yes, which budget do you have in mind?

MR. CUTLER: In the case of the hostage crisis, which united this country and in which Congress probably would have done anything the president asked, the separation of powers was not a factor. I disagree with your conclusions that the president adopted the wrong policies. I have not heard any other policies put forward, either before or after the fact, that had much of a chance of achieving any different result from what we now have.

I will give you some other examples. I will give you the invasion of Afghanistan and the need, or at least the need perceived by the president, to provide some additional aid to Pakistan. We ran into the problems of legislative requirements that neither military nor various types of economic aid could be given to Pakistan unless Pakistan had given certain nonproliferation assurances, which could not be obtained. In the case of draft registration, the president, the head of our government in foreign policy, determined that one appropriate signal to the Soviets was that at the very least, we were going to prepare for the possible need for a draft. The difficulty of obtaining draft registration approval, even for a $20 million appropriation—that is all that was at stake—took so long as to blunt the message we were trying to send and proved almost insurmountable.

So far as the budgets are concerned, to take a favorite Reagan subject, defense budgets, it is a fact that for the past ten years, Congress has legislated a lower defense budget than the president asked for. It is a fact that for the last ten years no president has gotten either the net budget results or the mix within a budget that he wanted, nor has any legislator or legislative leader of either party gotten the composite mix that he wanted. No one can be held accountable for our failure, the collective failure, to prevent these enormous budget deficits over the years.

DR. BERNS: May I respond to that? Your first response is interesting. That is to say, your response to my first point about the seizure of the hostages. You said that on that particular occasion it was certainly not the separation of powers that prevented the president from doing what might be done, because there was such a unanimity of view in the country, and that any policy that made sense probably would have been supported.

MR. CUTLER: Even some that did not make sense.

DR. BERNS: Yes, probably some that would not have made sense. That is exactly the sort of thing that Mr. Wilson was talking about earlier. When, indeed, that kind of unanimity behind a particular policy is understood to be or is present and when the country agrees that a particular problem has to be dealt with, the separation of powers is not an insuperable barrier to the achievement of policy.

MR. CUTLER: That is entirely right.

DR. BERNS: Therefore, I conclude by repeating what I said at the beginning. You exaggerate the difficulties posed by the separation of powers.

MR. CUTLER: I tried not to. I tried to point out in my article that when the system has worked, when we have been able to legislate and execute a policy for dealing with a situation—such as the Great Depression and World War II under FDR, the early days of the Johnson Great Society, and perhaps the early days of Wilson's own

New Freedom—that when there is a great consensus in the country, usually brought on by a great crisis, an external shock, the assassination of a beloved president, whatever it might be, for a while the system works.

But those are very rare times in this century. When we think of when the system worked, when we think of great presidents who accomplished something in their administration, we tend to think of Wilson, FDR, perhaps Lyndon Johnson, and perhaps Eisenhower, although he governed successfully for eight years by running the most limited possible government. Remove Eisenhower from the list, because his theory was to do as little as possible; although that worked in 1952, it would not work in the world we live in today. The economy now is an integral part of a worldwide system, to most of which the writ of our Constitution and our government just does not reach at all. It is not possible any longer to let our little free enterprise system, unmanaged, flower in a world of managed and competing world economies.

It does seem to me that the fact that the system has worked when there were great crises and great consensus tends to prove my point. Most of the time, we do not have 80–20 or 70–30 majorities; we have a series of issues on which the public splits 55–45—the environment, whether to restrict auto imports—and we have to be able to govern in those situations, as well.

MR. SILBERMAN: I would like to respond to Mr. Cutler's last remark. His comment about the Eisenhower administration reflects what is the underlying reality of his thesis. It is posed in terms of a procedural reform, but in fact it is based on certain subjective notions of what proper policy is. In his article, it is quite clear. He explains all the things the Carter administration could not get done, which he thinks should have been done, and then he describes them as balanced. Then he says because we could not do that, there is a fundamental defect in American government, and it has to be our Constitution. It is very difficult, reading his article or hearing him now, to think of any neutral question that somehow can be described outside of a subjective policy view.

Earlier, when I said one man's balanced program is another man's extreme program, he made his second point, which is that there ought to be political accountability and everybody ought to have to stand together under a single program—the Congress, the Senate, the president. As a matter of fact, we had an election in the latter part of 1980, in which that turned out to be more true than many thought was likely or possible. A number of senators were turned out of office, as well as the president, for voting for and adopting certain policies that the majority of the American people thought were wrong.

MR. CUTLER: We shall see whether the majority of the American people or the majority of Congress thinks the policies are wrong. Governor Reagan should have the opportunity to carry out his program, or at least the Republican party should have the opportunity to carry out its program.

MR. SILBERMAN: Will you guarantee your support?

MR. CUTLER: I will guarantee to try to give you the chance. It cannot be a do-nothing program. Programs are now in place. There are ongoing, continuing drains on the budget in place, which you must dismantle to carry out your program, and you will not be able to do it because of a structural fault and the fact that legislators are not sharing President Reagan's political fate. Both he and they will be able to say in the end, "Although we didn't get anything done and inflation is still at the same level, it's not our fault."

RUTH HINERFELD, League of Women Voters: I would like to pursue this question of a national consensus. As Dr. Wilson said, the public interest is not necessarily the sum of private interests, and, as Mr. Cutler has pointed out, national consensus only seems to emerge in times of great national adversity. What institutional improvements or changes can there be, short of the kinds of changes Mr. Cutler advocates, that would help the nation in its search for consensus? I say "search for consensus," recognizing that consensus, by itself, may not necessarily be of the highest value. In the absence of the search for consensus, however, we seem to be afflicted with many of the problems that have been characterized as difficulties of the present time—fragmentation, extreme self-interest, single interest groups. These things, of course, have been blamed on such developments as the weakening of the parties as institutions for mediation, changes in legislative and executive relations, changes in the leadership, and so-called reforms in both houses of the Congress.

Are there any alternatives in institution-building that will help us in that search for a national consensus?

DR. WILSON: I am not confident there are institutional strategies to achieve that objective. Among the reasons why there is not only disagreement but in some quarters disaffection about the government is that the government has promised more than it could achieve and has done so at the expense of inflating the currency and harming, in a very visible way, a style of life that most Americans thought was their birthright.

The source of my ultimate skepticism about Mr. Cutler's proposal is doubt that institutional reforms of the sort he proposes would do anything more than feed this process by enlarging expectations, enlarging the role of the president as a national leader conducting not an election but a plebiscite. The president's proposals would be put forward, based on assembling a coalition by offering as much as possible to as many as possible. Though this would sound good in the short run, it would lead to enlarged, and ultimately frustrated, expectations.

The problem is that government is too large. Although you and I might not agree—I am not certain about that—I am looking for ways of making government more modest and, at the same time, more moderate. Perhaps this can be done by constitutional limitations on spending; perhaps it can be done by other, less drastic means to force choices. I am not convinced, however, that this process will be facilitated by enhancing the power of the executive to ask for a yes-or-no vote on his program, because those programs that have received yes votes have produced this problem we now face.

MR. CUTLER: I agree with Dr. Wilson as to what is wise policy for the federal government. I also would like to see policy that is more modest and much more forthright in recognizing that we cannot have energy self-sufficiency and a perfect environment and a productive industry at the same time.

My difficulty with what he suggests is that it will be very difficult for a president elected on a mandate of having more moderate government to carry out that policy. It will be very hard, given our present system, to defeat the particular single interest groups that Ms. Hinerfeld referred to. It will be very hard to put into effect any program that any one of us is prepared to endorse.

In the end, the public will look for the party that will say, "We do intend to discipline ourselves. If you elect us to office, both the presidency and the legislature, we will stick together and carry out this program. If the majority whip goes against the leadership and the president on a particular matter, he will lose his office of whip," something we do not do today in our system.

HERBERT STEIN, American Enterprise Institute: I would like to ask three short questions.

Mr. Cutler seems to regard as an essential criterion for a good policy that one person, the president or even a congressman, regard it as the best of all possible policies. An alternative position is that a policy that very many people think is the second best or the third best might be better than a policy that some one person thinks is the first best. I wonder why he thinks that the criterion should be that one person think the policy is the first best.

MR. CUTLER: I did not mean one person, I meant the group that we elect to govern; and I do not mean one policy in the sense of one energy policy being better than another policy. I am talking about the balance to be achieved in going about the pursuit of our very many conflicting and competing goals, every one of which has a great deal to be said in its favor. I come back, in particular, to this issue of the budget.

DR. STEIN: I would like to ask a question about the budget. Most people would agree that our governing processes have many deficiencies and that many of them focus on the budget. I would like to hear some comment on the possibilities for reform, other than such radical, structural ones as have been discussed here.

After all, we did make a very big change in 1974 in the budgetary process, with which there has been rather limited experience, and I would be interested in any comments on whether that has improved the outcome at all. I would suggest that the outcome is not noticeably better in other countries with structurally different systems. In any case, the budgetary process still has a lot of room for change. We made a rather unwise decision in 1974 to take away the president's power to withhold or impound funds, which would have been a way to limit things. We could do something about the item veto, about long-range budgeting—things that seem simpler to me than a constitutional convention.

MR. CUTLER: Again, I am not proposing a constitutional convention. Most of the budget reforms you mention probably would require constitutional reform—unless Congress adopted the habit of putting in every piece of legislation, every piece of appropriation legislation, for example, permission for an item veto.

One could think of a provision, which I understand is in the German constitution, that the legislature may not enact a budget or a set of appropriations greater than proposed by the cabinet, by the government. I believe the Canadians have some similar provision in their constitution. How we would arrive at that, short of constitutional reform, is very difficult to imagine. A really determined Congress, a party that imposes discipline on its members, a return perhaps to the tools of power that Lyndon Johnson and Sam Rayburn possessed, would get us a long way in that direction, but it is very hard to turn history back on reforms of that type. The congressional budget process is almost in disintegration today, as you know.

DR. STEIN: Many people thought it would not survive this long; I would not be so desperate about it. A question I did not hear discussed has to do with this change in the kind of thing that the government does, which has affected the balance of power between the executive and the legislative branches in a very fundamental way. That is the enormous explosion of government regulation, which the Congress has no possible way of exercising any control over and which has inevitably made an enormous shift of power toward the executive. I wonder whether anybody has any suggestions for ways of redressing that imbalance.

MR. CUTLER: I am going to move right over with you and Mr. Silberman on that proposition. I have proposed, myself, that the president should assert power over the executive branch regulatory agencies, and even—if the Congress gives him power—over the independent agencies. Once more, however, to be able to do any of these things, you need discipline between an executive, even one so disposed, and the majority in the Congress to accomplish it. Every regulatory agency, with its single mission, has behind it a single-mission congressional committee and single-mission constituencies. It is very hard, even for a determined president, to impose on that agency the need for balance in considering other national goals.

DR. WILSON: I am ordinarily not cast in the role of reformer, but if reforms are to be sought, we should seek them from within the American experience on the basis of those institutional arrangements to which the American people have become accustomed. We should not reach overseas for an approximation of the parliamentary system; we should look at state and city governments in this country and ask what modifications in federal arrangements already tested at the city and state levels might commend themselves. Many governors have, in fact, line-item vetos awarded to them by state constitutions. Many city charters deny to city councils the right to increase the executive budget.

None of them, so far as I know, allows the governor or the mayor to force a new election, or vice versa, nor does any require the abolition of the separation of powers. These modest changes, which would require, as Mr. Cutler says, constitutional change, are the sorts of changes on which we could focus attention with a greater confidence that we know what we would get as a result.

**Mr. Silberman:** That is an excellent point.

At one point in Mr. Cutler's article he advocates that the president have control of executive branch agencies, and he has previously described that in a more elaborate way. Although we have certainly indicated a disagreement between Mr. Cutler and me, I thoroughly agree with the notion that having independent regulatory agencies is a constitutional anomaly, because in many respects it is in defiance of democratic theory. These independent agencies are not responsive to any democratic process—not to the Congress, not to the president. I would go further on that and suggest, as I did earlier—and here Mr. Cutler probably would not agree with me—that many of our problems, including many of the frustrations of the executive, come about because of avowed and open judicial policy making, which was not contemplated by the Founders of the Constitution.

**Mr. Cutler:** Let me cite Paul MacAvoy as an ~~example~~ authority for the proposition that more new regulatory agencies, and some of those with the greatest impact from the cost-imposing standpoint, were created during the Republican Nixon and Ford administrations than during the Kennedy, Johnson, and Carter administrations combined. I hasten to say, as you would say, that most of that was done because there were Democratic Congresses during those administrations, but that proves my point. We had not formed a government capable of carrying out a policy during those administrations. That is when the Environmental Protection Agency was originated by a Nixon executive order; that is when the Occupational Safety and Health Administration was originated; that is when the Consumer Product Safety Commission was originated. They are all children of this bastard form of government we have, in which the president might go one way and the legislature, or parts of it, are free to go another.

**John Forster**, Initiative America: My question is directed toward Mr. Silberman.

Most Americans would agree with you that our system of checks and balances and separation of powers is one of our strongest assets. If we can assume, though, that the problems in government today occur when our branches of government fail to come to a consensus or when they adopt a policy that the vast majority of Americans disagrees with, would you support extending our system of checks and balances and separation of powers to allowing voters to propose legislative solutions themselves to keep our branches of government in balance when they are in paralysis or in disagreement with Americans?

MR. SILBERMAN: I had always been somewhat hostile to initiative legislation until Proposition 13 was passed in California. [Laughter.]

Then, I was tempted to change my procedural views in accordance with the subjective results, as I have accused Mr. Cutler of doing. I restrained myself, however, and I am still opposed to the notion of initiative, certainly at the national level. I like the republican form of government.

DR. WILSON: I agree with Mr. Silberman.

MR. CUTLER: I do not have many such opportunities, so I want to concur in Mr. Silberman's idea. The principal problem with initiative legislation is that we lose the benefits of the legislative process—the possibilities for debate, constructive amendment, and compromise. We are stuck with the initial wording of the initiative, bad as it may be.

MR. DALY: Would you like to concur in this also, Mr. Brandon?

MR. BRANDON: Yes. A referendum bypasses the democratic process.

MR. DALY: This concludes another public policy forum, presented by the American Enterprise Institute for Public Policy Research. On behalf of AEI, our hearty thanks to the distinguished and expert panelists, Mr. Henry O. Brandon, Mr. Lloyd N. Cutler, Mr. Laurence H. Silberman, and Dr. James Q. Wilson. Our thanks, too, to the guests in our audience for their participation.

from Setting National Priorities: Agenda for the 1980s, edited by Joseph A. Pechman

## CHAPTER SIXTEEN

# The Crisis of Competence in Government

### JAMES L. SUNDQUIST

WHEN President Carter came down from Camp David, in July 1979, to talk of a national "malaise" and warn his countrymen that "a crisis of confidence" was "threatening to destroy the social and political fabric of America," he gave his political rivals in both parties an unintended issue. As the campaign got under way in the fall, Ronald Reagan was saying that there was no "failure of the American spirit," only "a failure of our leaders," that the people did not lack confidence in themselves but only in their government. And Senator Kennedy was throwing Carter's words back at him with, "the malaise is not in our people but in our leadership."

The implication, of course, was that confidence could be restored with a change in leadership. But the thesis of this chapter is that the problems of the U.S. government will not be solved by anything so simple as a change in leadership—or a return to office of the incumbent leadership, depending on one's preference. The American governmental system has built-in structural features that have always presented severe difficulties for any president who would provide the sought-after leadership. But deep-seated trends have been, and are, at work that will make effective government even more difficult to attain in the 1980s than it has been in the decade just ended and those that have gone before.

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## The Crisis of Confidence

Every poll that has been designed to measure the confidence of the American people in their government has shown a precipitous decline in that confidence since the mid-1960s. No one disputes President Carter on that point. A few figures will illustrate it.

Consider, for instance, the findings of the Center for Political Studies at the University of Michigan, which has asked some questions in identical form and at the same time in each presidential election year. Persons interviewed in its national sample who expressed agreement with five propositions (chosen from a set of answers in a multiple-choice format) can be considered to be alienated from their national government: "you can trust the government in Washington to do what is right . . . only some of the time"; "the government is pretty much run by a few big interests looking out for themselves"; "quite a few of the people running government are a little crooked"; "quite a few of the people running the government don't seem to know what they're doing"; and "people in the government waste a lot of money we pay in taxes." The averages of those who chose these answers were:

| | *Percent* |
|---|---|
| 1964 | 31 |
| 1968 | 40 |
| 1972 | 47 |
| 1976 | 61 |

The same general trend appears in answers to the Louis Harris poll question that asks how much confidence the voters have in "the people in charge of running" various institutions, both governmental and private. The percentage of respondents expressing "a great deal of confidence" has been going down for all institutions. Following are the percentages for Congress, the executive branch, and what Harris calls nongovernmental primary institutions (an average of the responses on medicine, higher education, organized religion, the military, major companies, the press, and organized labor) as shown in polls taken at various times during the years indicated:[1]

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[1] Harris survey data, summarized in *Public Opinion*, January–February 1979, p. 24; and ibid., October–November 1979, pp. 30–31.

| | *Congress* | *Executive branch* | *Nongovernmental institutions* |
|---|---|---|---|
| 1966 | 42 | 41 | 49 |
| 1971 | 19 | 23 | 30 |
| 1973 | 29 | 19 | 37 |
| 1974 | 18 | 28 | 31 |
| 1976 | 9 | 11 | 24 |
| 1977 | 16 | 23 | 29 |
| 1978 | 10 | 14 | 29 |
| 1979 (February) | 18 | 17 | 24 |

And a corresponding trend marks the Harris index of alienation, which is based on the percentage of the respondents who express agreement with four propositions: "the rich get richer and the poor get poorer"; "what you think doesn't count very much anymore"; "the people running the country don't really care what happens to you"; and "you're left out of things going on around you." Averaging the four percentages, Harris obtains the following proportions of "disenchanted" voters:[2]

| | *Percent* |
|---|---|
| 1966 | 29 |
| 1969 | 36 |
| 1971 | 40 |
| 1972 | 49 |
| 1973 | 55 |
| 1976 | 59 |
| 1977 | 58 |

One thing that is clear from the polls is that the steep slide in public confidence began quite suddenly in the mid-1960s. The year 1965 was a high point by any measure. Congress in 1964 and 1965 had put aside all doubt and in a spirit of euphoria had passed the pioneering, hopeful measures that made up Lyndon Johnson's Great Society—the Economic Opportunity Act, civil rights legislation, programs for Appalachia and other depressed areas, medicare, water and air pollution control, federal aid to education, and the rest. President Johnson was riding the crest of popularity; his approval rating ranged about 65 to 70 percent all through 1965, figures averaging well above those of any other postwar president except Kennedy after the same length of time in office. Congress also received then the high-

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2. *The Harris Survey*, December 8, 1977.

est approval rating in modern times, according to Harris. Fully 71 percent of the electorate gave it a favorable rating, compared to only 35 percent two years before. So public confidence had been rising. Then, after 1965, it began its slide.

What were the causes? What has made people angry at their government? The polls have not asked that question directly, but they are a rich source of random clues, and anyone who lived through the decade can construct from those clues and from experience and observation a list of events that have contributed to bringing the competence and responsiveness of government and its leadership into question. Most lists, surely, would include these: the Vietnam War, ghetto riots, the rise in crime, Watergate and the Nixon resignation, the Agnew scandal, the highest unemployment since the Great Depression, double-digit inflation, the energy crisis and gasoline lines, and setbacks to the United States in world affairs—in Africa, the Middle East, and elsewhere.

The list could be extended, but in any case a succession of adverse events has produced a generalized feeling about government far more negative than was the case fifteen or twenty years ago—the malaise about which Carter spoke. There is the general impression that government is wasteful. There is the widely shared conclusion that government efforts to solve problems do not usually work, that ambitious initiatives like the Great Society are bound to fail. There is the pervasive feeling that the government is too intrusive, oppressing people and businesses with regulation that brings more burden than benefit. There is the judgment that government does not deliver on its promises, that after all the talk about cleaning up the "welfare mess," closing tax loopholes, streamlining the bureaucracy, and cutting red tape, things always remain the same. There is the suspicion that government looks out mainly for the rich and the "special interests," and the conviction that politicians are not as honest as they should be; corruption and scandal were supposed to have ended with Nixon and Agnew, but the new administration was barely in office when the Bert Lance affair splashed in the headlines and on television news, and the usual quota of Congressmen were caught accepting bribes.

One does not have to share all these negative opinions to reach the essential conclusion: the performance of the government has fallen far short of what the people have expected and have a right to expect. The past fifteen years have seen one long string of mistakes, of commission or omission. Some of the events, the politicians in power at the time may claim, were beyond the control of the U.S. government. But opposing politicians are always around to reject any such attempted alibi and exploit the failure—and the public judgment is not likely to be generous. The people expect the government to control events. After all, candidates for office keep promising that it can do so. They go on insisting that elections make a difference. So each time an election does not, it adds to the disillusionment. And that, in turn, appears to be expressed in the decline in voting participation, which was also precipitate in the 1970s—as Carter noted in his July speech.

The loss in confidence in the early Carter years, in particular, was severe. The polling data suggest that the public mood had experienced some recovery during the brief Ford administration and through the election and inauguration of Jimmy Carter. If the country had not returned to the euphoric heights of 1965, it seemed at least to be pulling out of the doldrums. When Carter was sworn in, the nation faced the future with a fair measure of the optimism and hope that has always marked Inauguration Day. But sometime in 1977, the optimism began to fade, and with it, Carter's standing. By early 1979, the crisis of confidence was again apparent. To turn to the polls once again, the responses to two questions asked repeatedly in recent years measure perhaps as well as any the shifts in the general public perception of how the government is coping with the nation's problems. The first is: "[Are] problems . . . no worse than at other times, [or is] the country . . . in deep and serious trouble?" Among those respondents with an opinion, the percentages choosing each alternative are as follows:[3]

| | *Problems no worse than at other times* | *Country in deep and serious trouble* |
|---|---|---|
| March 1974 | 32 | 68 |
| January 1975 | 29 | 71 |
| August 1976 | 58 | 42 |
| September 1976 | 51 | 49 |
| July 1977 | 59 | 41 |
| April 1979 | 33 | 67 |

The second question was: "Do you feel things in this country are generally going in the right direction, or do you feel that things have pretty seriously gotten on the wrong track?" The percentages are shown below.[4]

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[3] Time-Yankelovich Surveys, reported in *Public Opinion*, June–July 1979, p. 21.

| | *Right direction* | *Wrong track* | *Don't know* |
|---|---|---|---|
| October 1973 | 16 | 74 | 10 |
| October 1975 | 19 | 71 | 9 |
| February 1977 | 41 | 44 | 14 |
| February 1979 | 20 | 65 | 15 |

The downward trend in 1977–79 paralleled the drop in Carter's popularity. The percentage of the voters giving him a favorable rating ranged from 28 to 33 percent in a series of polls between May and August 1979, down from between 60 and 67 percent two years before —one of the steepest declines on record. (That was followed by one of the sharpest surges in a presidential approval rating, after the seizure of the U.S. embassy in Tehran. Whether this reflects a lasting reappraisal of Carter's leadership or simply a support-the-president response to crisis, and whether it is accompanied by any significant revival of confidence in government generally, are not yet clear.)

Late in 1978, President Carter's own pollster, Patrick H. Caddell, asked his respondents how much they thought the government could do to solve certain problems. The percentage that thought the government could do "a lot" was relatively high—46 percent responded that it could bring down inflation to acceptable levels; 38 percent, hold down unemployment to acceptable levels; 52 percent, reduce taxes significantly; 33 percent, reduce crime significantly; 45 percent, improve health care. But the percentages of respondents who considered it "very likely" that the government "will actually be able to do" those things were 10, 9, 11, 8, and 13, respectively. When only 10 percent of the voters believe their government will solve the public problem that weighs most heavily on them—inflation—that is a resounding vote of nonconfidence. And the 10 percent was about equal to the proportion expressing "a great deal of confidence" in President Carter and Congress that was reported a few weeks earlier by Harris.

If all that is the bad news, the good news is that the people have not given up on the American system—not yet, anyway. Pollster Harris asked some questions in September 1978 designed to probe the public's feelings about government itself, as distinct from the people leading it. He identified a series of characteristics that people desire in government, and then asked two questions: "Do we have a government that fits these characteristics?" And "Is it possible to have" such a government? The responses given for some of the characteristics are as follows:[5]

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[4] Roper surveys, reported in *Public Opinion*, June–July 1979, p. 22.

| | *Have* | *Don't have* | *Possible* | *Not possible* |
|---|---|---|---|---|
| Almost wholly free of corruption and payoffs | 10 | 84 | 48 | 45 |
| Best people are attracted to serve in public life | 18 | 69 | 68 | 22 |
| The good of the country is placed above special interests | 26 | 61 | 76 | 16 |
| Public officials really care what happens to people | 38 | 48 | 81 | 12 |

"It is evident," Harris concluded, "that the American people have not given up hope for a better federal government and better people to lead it. In fact, despite the shock waves that have visited the public over the past 15 years . . . there has never been much evidence that most people have gone sour on the system itself and have finally concluded that it is unworkable." So the political gibes that followed President Carter's July speech had an element of truth in them. To a great extent, the crisis of confidence has been a crisis of faith in the people running the government now and their recent predecessors—in Carter's capacity for leadership and in the capacity of Congress as his partner in the government.

## A Crisis of Governmental Competence

If the patterns of the last decade and a half continue, the election year of 1980 will see a rise in optimism. Most people will find in one or another candidate someone in whom to place their trust—more tentatively than before, perhaps, but if not with the old confidence at least with hope. The new president—or Carter, if he is reelected—will then have a year or so during which to demonstrate that the government can cope with what the people perceive to be the country's problems. If the new burst of optimism is followed by another letdown, the basic faith in the political system on which the government rests is bound to be further undermined, with consequences that can only be conjectured.

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[5] *The Harris Survey*, November 13, 1978.

The fundamental question, then, is whether in the next few years the U.S. government can be made to work—under any leadership. The crisis of confidence turns out to be a crisis of efficacy, or competence, in government. After the shocks the country has suffered, can a series of successes follow?

After what has happened, the day of exaggerated expectations about what government can accomplish may have passed, and fortunately so. Yet, if people are to take the trouble to vote, they must expect *something* from the leaders they choose. What is the public conception of a government that works? At a minimum, I suggest, the people expect this much: first, that a candidate for president have a program to address the central problems that concern the people—not necessarily one with all the answers, but at least a philosophy and an approach that give promise of succeeding; second, that the winning candidate then proceed to accomplish the program—again, not in every detail or all at once, but with enough actual achievement to give the public a sense of progress toward the goals that were projected in the campaign. In short, a mandate to lead the country in an indicated direction is sought and given, and then it is expected to be discharged.

That defines the problem of competence in government. What has always existed in the United States is a gap, sometimes narrow and sometimes wide but always present, between the mandate and its execution. The mandate is granted essentially to one person, the president, but it can be executed only through the collaboration of three separate institutions—the president, the Senate, and the House—elected from different constituencies and free to exercise their powers independently. Two-thirds of the senators did not even run in the election that chose the president, and hence have no share in the mandate. And many of those who were elected with the president—even those of his own party—may have little more in common with him than the date of their election. They were chosen by much smaller electorates, and they presented their individual platforms and received their own distinct and perhaps quite different mandates.

So presidents have always had some trouble getting their programs through Congress. Yet the public has little patience with presidents who blame their troubles on the legislature. The people choose a president to go to Washington and take charge, and if he fails to achieve the objectives he set out, that is his fault, in their view. They may—and usually do—lay the fault on Congress also, but the waywardness of Congress is a constant, taken for granted, and one of the jobs of the president is to "lead" the legislature. If he fails to get his way with it, then his capacity for "leadership" becomes a political issue, as it did in the campaign of 1980. He is expected to stop the incessant bickering, and get things done.

But the degree of harmony among the Senate, the House and the executive necessary for more than routine and incremental legislation —except in situations of manifest crisis—is not the rule in the U.S. government; it is the exception. One can identify only a few brief periods in the entire twentieth century when relations were close enough—or presidential leadership strong enough, which is the other way of describing it—to achieve major innovations in controversial areas of public policy. The most notable of these were the first two years of Woodrow Wilson's administration, when the New Freedom was enacted; the first term of Franklin D. Roosevelt, when the New Deal took form, and the first two years of Lyndon Johnson, when the Great Society was founded. Each of these short but frenziedly active intervals came after a massive presidential landslide, which established the president's credential as a leader (or, in the case of Johnson's first year, after the assassination of a president, which had the effect of unifying the country behind his successor). In each, the legislative agenda was swept clean of long-pending measures; more new programs were initiated, perhaps, than could be sensibly managed. In between these periods, the agenda of unfinished business grew, because few measures could be passed beyond those clearly required by national emergencies or supported for other reasons by an extraordinarily high degree of consensus in the country.

But the prospects for attaining a sufficient degree of unity among president, House, and Senate to enable the government to move forward confidently and energetically to cope with the country's problems are even smaller now than they were in the time of Woodrow Wilson, or Roosevelt, or Johnson. If attaining governmental competence has been always difficult in the past, it will be even more arduous in the future. For in the last decade or two, the political scene has changed profoundly, and the changes all militate against governmental effectiveness.

Four of the trends, all interrelated, affect the government's ability to formulate policy: the disintegration of political parties, the popularization of presidential nominations, the rejection by Congress of presidential leadership, and fragmentation of authority in Congress that prevents its development as an alternative source of policy integration and leadership. A fifth trend is the gradual deterioration of administrative capability. The remainder of the chapter addresses these in turn, and then considers what, if anything, can be done to alleviate the crisis of governmental competence.

## Party Disintegration

Political scientists who for generations have pondered the built-in disunity of the U.S. government have generally sought the solution in an institution that the Founding Fathers did not contemplate and that George Washington warned against—the political party. The party, they found, was the "web" or the "bridge" that bound together the separate elements of government. As late as the mid-1960s, the political party was strong enough to serve that purpose, when circumstances were favorable. A Democratic president then could lead the Democratic House and Senate majorities for a time because all felt a party bond and a commitment to a party philosophy and program. But in the past fifteen years, a process of party disintegration, already under way, has accelerated. By now, the web has lost much of its tensile strength, the bridge its carrying capacity.

What held American parties together was not so much their ideologies or their programs (except in periods of realignment, like the 1850s or the 1930s, when for a brief time issues predominated) as two other factors: patronage and the control of nominations for the elective offices that dispensed the patronage. In the past one hundred years, these two bonds have eroded almost to the point, now, of nonexistence. Patronage has been diminished by civil service, by the creation of public agencies to dispense welfare benefits once handled by the parties, and by the development of the ethic—enforced by open and quasi-judicial processes of administration monitored by the media as well as the courts—that partisan favoritism shall be forbidden in the distribution of governmental benefits. And the control of nominations has passed almost completely from the party's leadership to its mass membership—in other words, to the public at large—through the direct primary system. At the national level, that revolution is now complete. Until 1968, party leaders still had some part in choosing presidents; now a state chairperson or national committee member has not much more influence than any other individual voter. Parties are even giving up the business of campaigning; candidates are marketed through television by advertising specialists.

One can hardly regret the passing of old-style political machines, with their corruption, bossism, and cronyism. Few persons nowadays suggest returning to the "smoke-filled room" as the way of selecting presidents. The new ideal is for open, participatory parties, united by program objectives rather than by patronage. Yet only in a few places do such new-style party organizations have cohesion approaching that of the old machines (and even in those places, their durability has yet to be proved). Consequently, within what are loosely referred to as the Republican and Democratic "parties," the trend has been steadily toward an every-candidate-for-himself kind of campaign.

Today candidates for the House and Senate—sometimes even presidential candidates—refer to the party platform rarely and reserve the right not to be bound by it. The platforms of presidential candidates are whatever they say they are during the campaign, but the candidates speak only for themselves, not for those who share the ticket with them. The latter have their own platforms. So when those who together carried the standard of the victorious party take office, they do not necessarily have a common program or even a shared philosophy. And not since Wilson's first two years, when the House and Senate Democrats held caucuses to hammer out the party program and bind the party members to support it, has there been in either party even a mechanism for formulating a party program. During the two later periods of historic legislative achievement, under Roosevelt and Johnson, the party's program was simply announced by the president, and because he had demonstrated overwhelming popular support in a landslide election, Democratic senators and representatives closed ranks behind him. But party cohesion lasted only as long as popular support for the president remained at its crest. When it began to fade, legislators again looked to their own constituencies for their own mandates, and began to go their own ways. Coalitions, such as the old Republican-southern Democratic alliance, formed across party lines and often took effective control of one or both houses of Congress.

The political party has been steadily weakening, then, as a force for unifying the separate policymaking elements of government—president, House and Senate—even when all are controlled by the same party. But with the decline of parties and the concomitant rise in independent voting has come a new phenomenon of extraordinary import for governmental competence—divided party control. As voters pay ever less attention to the party label, picking and choosing among candidates (for the presidency, at least) as individuals in a kind of personality contest, straight-ticket voting disappears. In personality contests, because neither party has any inherent advantage, the winners are distributed between them on a random basis. The result in the case of the president and Congress has been for more than two decades what random selection would be expected, mathematically, to dictate. Half the time the country has had divided government, something rarely known in the days of strong party organization and identification. During the twenty-six years from 1955 through 1980, the Democrats have continually controlled Congress, but during fourteen of those years the Republicans have held the presidency—six years of split control when Dwight Eisenhower was in the White House and all eight years of the Nixon and Ford administrations.

At such times, the normal tendency of the U.S. system toward deadlock becomes irresistible. Harmonious collaboration, barring national crisis, is out of the question. The president and Congress are compelled to quarrel. No presidential proposal can be accepted by the legislature without raising the stature of the president as leader. Similarly, no initiative of Congress can be approved by the president without conceding wisdom to his enemies. The conflict, bickering, tension, and stalemate that characterized the fourteen years of divided government were inevitable.

Given the continued predominance of personality as distinct from party voting, the odds are close to fifty-fifty that in January 1981 the country will enter another four years of divided government and its accompanying incessant conflict. If that happens, confidence in government can only be damaged further. When the president is constantly denouncing Congress as prodigal and irresponsible, and Congress in turn is rejecting his ideas as fatuous and unworthy, will not the people inevitably come to believe both?

But the bonds of party have proved too weak to bridge the gap between the branches even when the president and the congressional majority are of the same party, as they have been in the four years since 1977. President Carter's first term has not been one of the rare historic periods of fruitful collaboration, and the limited legislative output—as in the case of energy—has disappointed almost everyone. The effect on public confidence in government has been direct, and disastrous. To the data on public opinion presented above can be added one more item: A *Washington Post* poll in July 1979 found that two-thirds of the sample believes that President Carter and Congress have not worked well together. Of those, 86 percent said that lack of cooperation was harmful to the country. They absolved neither Congress nor the president, although they considered the legislature somewhat more at fault.

## Haphazard Presidential Selection

In all democratic countries, by definition, the people make the final choice among the parties' nominees for national leadership. But only in the United States do the people themselves also make the nominations.

When the state presidential primaries became the mode rather than the exception after 1968, a basic safeguard in the presidential election process was lost. Previously an elite of party leaders performed a screening function. They administered a kind of competence test; they did not always exercise that duty creditably, but they could. More important, however, they could—and did—ensure that no one was nominated who was not acceptable to the preponderance of the party elite as its leader. Even if a candidate swept the limited number of primaries, he could still be rejected, as Senator Estes Kefauver was in 1952. Usually, then, the nominee was an insider in the political system, a person who had established some credentials as a politician or an administrator, or both, of national stature and of demonstrated competence. The party leaders who approved the nomination were then prepared to follow the nominee, and to mobilize the party on his behalf.

Since 1968, all that is changed. There is no screening mechanism. A party's nominee for president now is someone who has been able to devote enough time to shaking hands in the early primary and caucus states and to forming an effective get-out-the-vote organization there, who has raised enough money to put himself on television throughout the primary season, and who has proved to have popular appeal. He may be an outsider to the national political process. He may have no experience in the federal government he seeks to head. He may be a neophyte in dealing with complex issues of foreign relations and the domestic economy. He may be in no sense the natural leader of large and crucial elements of his own party. If elected, he may be a stranger to the people in Congress with whom he has to work, and he may have little sense of how to get along with them. He may have little idea of the kind of talent he needs to help him run the executive branch, and no network of experienced advisers to help him find them. All this was true of Jimmy Carter.

A president may have the capacity to learn fast, as seems to have been the case with Carter—at least in some elements of the job. But that, if true, is pure luck. And in any case, for a country suffering a crisis of governmental competence, it is perilous to devote the first year or two of a new administration to little more than on-the-job training for an inexperienced president and an even more inexperienced entourage, without knowing how much competence will prove to be there when the training period ends.

Without passing judgment on President Carter's personal capacities, about which people differ, this much can be said with certainty: those who find this particular president—or any successor—deficient as a national leader should look with some urgency to the shortcomings of the system that selected him. Jimmy Carter, the outsider, would not have been the nominee in 1976 of an organized political party; he is what can happen when the choice of party leader is taken entirely out of the hands of the party elite and turned over to the people.

In this lottery, some future president—if not chosen in 1980, then in some future year—could conceivably have all of Jimmy Carter's weaknesses without his strengths. The adverse effect on competence in government—and public confidence, and national malaise—would be immeasurable.

## Rejection of Presidential Leadership

The theorists who envisaged the majority political party as the institution that would unify a government of separated powers considered the president as the leader of the party, the natural leader of the government. And this view went beyond the theorists. The public at large has come to look upon presidential leadership as an essential feature of twentieth century government in the United States. Looking back over history, it is the strong presidents—Washington, Jefferson, Jackson, Lincoln, the two Roosevelts, Wilson—whom Americans revere. The presidents of the nineteenth century who limited themselves to presiding over the executive branch, while letting Congress direct the nation's policy, are forgotten. And just as the public came to expect presidents to be strong leaders, so did the nation's politicians—including those in Congress.

Indeed, the modern powerful presidency could not have been created except by Congress. The presidency did not grow by seizing power. Rather, statute after statute—many initiated by Congress itself—bestowed new functions on it. The Budget and Accounting Act of 1921, a congressional initiative, required the president to lay out a program for the entire government—which chief executives had not done before. The Employment Act of 1946 required the president to have an explicit program for economic prosperity, growth, and stability—which, until the Great Depression, presidents had not had. The National Security Act of 1947 affirmed the president's primacy in foreign and national security affairs. Beginning with Franklin Roosevelt, Congress expected the president to lay out its legislative agenda, to plan with the Senate and House leaders the strategy and tactics to get the legislation passed, and to help gather the votes. In short, the president was installed as the effective head of the legislative branch. Congress organized itself to respond, to criticize, and to follow, but not to lead.

Because this concept necessarily depended on the willingness of the legislative majorities to accept the presidential leadership, it was bound to run into serious trouble in the years from 1955 through 1960, the first of the two periods of divided government that mark this midcentury. In foreign and military matters, the Democrats who controlled Congress were inclined not to challenge Eisenhower's enormous prestige, but in domestic affairs he had no equivalent respect. On those matters they refused to follow where he led, and he, as might be expected, was even less inclined to follow them. So the government went through six years of stalemate and drift, able to adopt noncontroversial measures or compromise on incremental legislation but to accomplish little more. Later, in the second period of divided government from 1969 through 1976, the model of presidential leadership and congressional followership collapsed entirely.

Had Nixon been another Eisenhower, benign and somewhat passive in his dealings with Congress, the model might have survived. But in Nixon's first term, he became increasingly the aggressive partisan. By the end of that term, he was pushing his powers to the limit, seemingly determined to impose his program on the country in defiance, where necessary, of the legislative branch. In doing so, he aroused the collective anger of Congress and provoked it to fight back.

A series of events converged in the winter of 1972–73 to bring executive-legislative relations to a crisis and arouse a wholly new congressional assertiveness. One issue was fiscal policy: Nixon had humiliated Congress in a struggle over a spending ceiling in the fall; when Congress failed to come up with the budget cuts he demanded, he took power into his own hands and impounded $9 billion (by the narrowest definition of the term), thus unilaterally repealing laws Congress had enacted. Another issue was the war power, a question that had been long festering: while Congress was in recess, Nixon without consultation intensified the bombing of North Vietnam and mined the port of Haiphong. A third was executive privilege: Nixon was asserting unlimited power to withhold any information from Congress, solely at his own discretion.[6] A fourth was reorganization: Nixon put into effect the basic features of a plan for reorganizing the executive departments that Congress had explicitly rejected.

When the Ninety-third Congress assembled in January 1973, its members were in a fighting mood. But it was also a mood of great anxiety. The members sensed that, as Senate Majority Leader Mike Mansfield put it, "the fault lies not in the Executive Branch but in ourselves." The problem, they finally admitted to themselves, ran deeper than just the curbing of the Nixon excesses. Even without these, Congress had lost what its members repeatedly referred to as its coequal status under the Constitution. And it had done so consciously and deliberately, in successive abdications. It had built the presidency, one brick at a time, into the structure that now towered

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6. "Statement About Executive Privilege, March 12, 1973," *Public Papers of the Presidents: Richard Nixon* (U.S. Government Printing Office, 1973), pp. 184–86; and testimony of Attorney General Richard G. Kleindienst on April 10, 1973, in *Executive Privilege, Secrecy in Government, Freedom of Information*, Hearings before subcommittees of the Senate Committee on Governmental Operations and Committee on the Judiciary, 93 Cong. 1 sess. (GPO, 1973), vol. 1, pp. 18–52, especially pp. 45–46, 51.

over the legislative branch. It had elevated whoever occupied the White House to become the dominant figure in the government.

In the course of a single Congress, the Ninety-third, of 1973 and 1974, the legislature went a long way toward rectifying the previous six decades or so of continuous decline. As the Watergate scandal closed in on Nixon, Congress took advantage of a collapsing presidency to shift the balance. It did all it could by law to recapture the war power—or at least a partnership role in it—through the War Powers Resolution, enacted over Nixon's veto. It regained control of fiscal policy—the power of the purse—through the Congressional Budget and Impoundment Control Act, accepted by Nixon in one of his final acts in office. (Meanwhile, President Nixon voluntarily discarded his reorganization scheme, and the Supreme Court stripped him of his claimed unlimited right of executive privilege—though it did not define what the limits are.) Beyond those specific statutory monuments of the new assertiveness, the congressional mood expressed itself in many diffuse ways. Both houses officially instructed their committees to exert more effort in overseeing the administration of the laws, and for the first time the legislature looked closely at agencies it had earlier let slip out of sight, including the Central Intelligence Agency. A device that had been used somewhat sparingly, the legislative veto of contemplated administrative action, was extended over a new and wide terrain. And Congress entered a phase of freer intervention in matters of foreign policy.

All these actions enabled a Democratic Congress to assert leadership and control over an executive branch that at the time was in Republican hands. But in 1977, the presidency reverted to the Democrats again. What, then, of the new relationships? In practice, there was a pronounced easing of tensions. Mutual recrimination largely ended. Rather than being under compulsion to try to discredit a president of the opposition party, the congressional majorities found themselves under pressure to make their own president look good; party labels had not lost their meaning altogether, and congressional Democrats had to expect to run on the same ticket with Jimmy Carter in 1980. By the same token, the president had to be conciliatory because he knew he would need the support of all those Democrats in their states and districts. Democrats in both branches had a political interest in the record on which they all would run.

Nevertheless, the formal balance of power has remained the same as it was when Gerald Ford was President. All the innovations of the Ninety-third Congress have remained in effect—war powers, budget process, impoundment control, legislative veto, expansion of oversight activities. The aggressive and vastly enlarged congressional staffs that were formed when Congress resolved to reject the leadership of a Republican president and oversee and control executive activities have not been disbanded, and they would find scant joy in working for a passive Congress that followed presidential leadership. Congress shows little tendency toward relinquishing any of its new authority; while moderating the tone, it is not giving up the substance of the new assertiveness.

This would be no problem if Congress had the capacity to set the country's course, as the substitute for presidential leadership. But there are severe limitations on the capability of the legislative branch to develop integrated and coherent policy. If the model of presidential leadership and congressional followership is to be discarded (or suspended), no fully satisfactory alternative model of congressional leadership has yet been designed to take its place. And recent trends within Congress make it even less likely than before that such a model can be devised.

## Limitations on Congressional Leadership

Whatever else may be said about it, the executive branch is well organized to prepare a comprehensive and internally consistent governmental program. With its hierarchical structure, it can represent divergent views at the lower levels but blend and reconcile them at higher levels, with a point of decision at the top. Each autumn the entire executive branch goes through an elaborate process of policy integration, out of which emerges "the program of the President." During this process, contradictions among specific programs and policies can be worked out, so that their aggregate effect will serve the broad policy objectives—fiscal, economic, foreign, military, urban, energy, and so on—that the president has set. The program of the president—and it is significant that the noun takes the singular form—is embodied at the beginning of each new year in a series of state papers, the State of the Union Message, the Economic Report of the President, and the budget. These are followed by supplementary special messages spelling out specific legislative proposals.

Congress, in contrast, had no mechanism for policy integration when its era of resurgence began in 1973. Its policy decisions had traditionally been piecemeal, put forward by separate committees and considered separately, at different times, by two independent houses, without benefit of any controlling philosophy or set of policy objectives for either house, much less for the legislative branch as a whole. That had worked reasonably well, most of the time, because Congress had been willing to look to the president to do the integrating. It could then modify and adapt and adjust the elements of the president's program, without destroying its essential unity. But in the era of the new assertiveness, Congress insists upon a freedom to reject the president's program outright. During the period of divided government that ended in 1977, it did just that, and in future such periods it will surely do so again. In that event, the government's policymaking process—barring congressional reorganization—will be left without even a coherent body of policy objectives and proposals acceptable as a basis from which to begin.

The competence of the policymaking processes depends, then, upon the extent to which Congress, in assuming its new responsibilities, creates new machinery to match. But any effective mechanism for establishing broad policy objectives and developing a coordinated and integrated program to support them would require the delegation of considerable new power to the congressional leadership, or to powerful centralized committees of some kind, and centralization of power runs directly counter to the current temper of Congress. Ever since "Czar" Joseph G. Cannon was dethroned as speaker in 1910, the trend in the House has been toward dispersal of power, and the trend gathered new force in the 1970s when committee chairmen were stripped of much of their power and the seniority system that protected them was abolished. The same tendencies have been apparent in the Senate. If one characteristic of Congress of the 1970s has been the new assertiveness, another can be called the new individualism. And they are basically incompatible.

Political individualism is both the consequence and the cause of the decay of parties, which was discussed above. As the old-style machines faded away, either the vacuum was filled by new-style, program-oriented party organizations—widely participatory, undisciplined, individualistic—or it was not filled at all. In either case, from this different political milieu came a new kind of candidate, for

Congress as well as for other offices. Because these new candidates did not arise through disciplined organizations, they are individualists from the beginning of their political careers. As candidates they were self-selected, self-organized, self-propelled, self-reliant, with no habit of being deferential to the established and the powerful, and they will not be so in Congress, either in committee or on the floor. When there were enough of this type of member in Congress, the nature of the place was bound to change.

And everyone agrees it has. In both houses new members are seen as being different from their elders and introducing new modes of conduct. "Sam Rayburn used to be able to glare people down," said House Majority Leader Thomas P. O'Neill, Jr., in 1974. "These new members are brighter, better educated, more talented. . . . You just don't glare these people down." The House, said O'Neill, was "extremely difficult to coordinate." Machine politics "is dead" in the country, he went on, and hence in the House as well.

And that was even before the Watergate class of 1974—the largest body of newcomers since 1948 and surely the most assertive in many years. A survey of House members by the *Washington Post* in 1975 showed that a majority of the members thought the class of 1974 was indeed different from its elders. The new members were described as "wild, uninhibited . . . feeling their oats," "less willing to go along to get along," "in a hurry to make a record," "younger, brighter, more active, involved and vocal," "more questioning of our institutions." The younger members "resist the idea of elders calling the tune," was a news magazine's summary in April 1975. But the elders did not really try—not in the old manner, at any rate. "The 'go along, get along' idea never has been pressed by the leadership," testified Jerome A. Ambro, chairman of the freshmen Democrats' organization in 1976. A member of the leadership, Chief Deputy Whip John Brademas put it this way: "1976 is not 1966 and it's not 1956. I don't think, given the changes in American society, that intelligent and highly motivated young men and women will sit back and wait for a few years before speaking out." "The juniors are no longer on their knees," said Senator Adlai E. Stevenson, in his fifth year in Congress in 1975. "We're not asking, we're demanding. We're organizing and using power."

"No one can lead men and women who refuse to be led," complained journalist David S. Broder in 1975 in diagnosing the ills of a "floundering" Congress. "The House juniors have overthrown the old power centers. Yet they consistently refuse to heed even those they installed in power." The Democratic Study Group that year found the lowest party unity scores in twenty years.

Speaker O'Neill, who took office in the following Congress, is generally credited with being the strongest speaker since Rayburn. Yet the attitude of the membership toward party discipline appears essentially unchanged. "It is . . . an atomized House, increasingly resistant to leadership," wrote another newsman, Dennis Farney, in 1979. The members themselves confirmed the judgment. "It's not enough any more to say to people that the leadership is for something, so they should be for it," remarked Representative Richard A. Gephardt of Missouri, an influential junior Democrat; "people vote for things if they want to vote for them."

With so unruly a followership, the tendency of the leadership in both houses has been to avoid trying to impose its will, or at least to choose its fights carefully to avoid risking defeat and exposing its weakness. "I don't twist arms. I shake hands," was Speaker Carl Albert's way of putting it. "The Senate never wanted a leader," observed Senator Edmund S. Muskie, "and it has seldom had one, at least not one in the sense of somebody who could mobilize a majority." "I don't feel pressure to go along with the party position," said Senator Gary Hart, a first-term Democrat from Colorado, in 1979. But the party position in the Congress is still either the president's program or none at all. Neither in the House nor the Senate, even in the periods of divided government, has the majority leadership presumed to put forward any alternative program of its own; it has not even made policy pronouncements or assembled a staff that in size or backgrounds would enable it to do so.

Nevertheless, Congress has experimented with a device for policy integration more in the pattern of legislative bodies—the committee. In the important field of fiscal policy, new machinery has been created, a budget committee in each house and a Congressional Budget Office to provide analytical support. That machinery has been remarkably successful on the whole, far exceeding the expectations of most observers (if it is judged on its ability to produce a considered and rational congressional fiscal policy, not if it is judged solely—as some critics insist on doing—on whether that fiscal policy conforms to the critics' view of what the policy should be).

The House and Senate budget committees, through a process analogous to that of the executive branch, prepare in the early months of each year their versions of an integrated budget and fiscal policy. Each house acts on the policy developed in its committee, and after the two bodies have reconciled their measures in the usual way through a conference committee, the agreed-upon resolution, adopted in May, serves as a guide to all committees and to both houses thereafter. In the fall, Congress reviews its earlier decisions and, in the light of subsequent actions, sets its final policy. With the new process, the former acknowledgedly irresponsible procedures of Congress have given way to responsible ones. Assuming that the process continues to work as it was intended to (which may be open to some question because, as this chapter is being written, it appears doubtful that the budget committees will be able to enforce the spending ceiling adopted by the two houses for 1979–80), Congress will have developed a wholly new policy leadership capacity of its own.

But the happy precedent of the budget process has not been extended beyond the fiscal field. True, Speaker O'Neill experimented in 1977 with the use of ad hoc committees as integrating devices in two other fields, energy and welfare. They did serve to overcome jurisdictional jealousies and bring forward a legislative product with remarkable dispatch (if only by adopting essentially the administration's program). But this promising device can at best be used only on a limited number of issues in any session. And, lacking the statutory deadlines of the budget process, it does nothing to compel the integration of House and Senate policy. The welfare bill produced by the House ad hoc committee and passed by the House was not even seriously considered in the Senate. And the momentum of the House energy bill was wholly lost in a conference committee deadlock that was not broken until the end of the next session in the following year. Since then, O'Neill has not repeated the experiment.

With no continuing integrative devices except in the field of fiscal policy, Congress cannot prepare a comprehensive program corresponding to that of the president. If the budget process continues to provide a means for bringing the spending and revenue components of all its legislation into harmony with a general fiscal policy, Congress will have solved a considerable part of the problem of program integration, but by no means all of it.

Both Congress and the president have recognized that the many policies that have an impact on urban areas should be brought into consistency with a general urban, or urban growth, policy. The president has contended, and Congress appears to agree in principle (as shown by its ad hoc committees) that the country needs an integrated energy policy. Not all economic policy is encompassed within budget policy; Congress created the Joint Economic Committee to consider all elements of economic policy in relation to one another, but since the committee is strictly advisory, without legislative jurisdiction, it is in no position to produce and implement an integrated economic policy for Congress.

Most crucial of all is the realm of national security. More than three decades ago, Congress established the National Security Council as the instrument for coordination of foreign and military policy in the executive branch, and throughout the postwar period (as well as during the war), the executive branch has been committed to the concept of policy integration in this broad area. Every aspect of foreign relations and every issue relating to the size, composition, and deployment of the armed forces has been subject to constant examination in terms of a central strategic question—how the fundamental competition between the U.S. and Soviet systems would be affected.

Yet Congress, when it set up the National Security Council, organized no comparable machinery on Capitol Hill. This caused no great difficulty until the late 1960s, because in national security affairs presidential leadership was taken for granted. But then came the schism over Vietnam, and the new assertiveness spread to foreign policy. With a deep sense that it had been misled, deceived, and betrayed by presidential leadership, Congress began to make foreign policy decisions. And here the new individualism manifested itself in its most chaotic form. Various committees in the two houses went their separate ways, and the committees themselves were fragmented. Leadership began to come from almost anywhere, inside or outside those committees, unpredictably. On a series of critical issues—aid to Vietnam, the Greek-Turkish clash over Cyprus, intervention in Angola, Jewish emigration from the Soviet Union, the Rhodesian chrome boycott—Congress took it upon itself to reverse the presidential policy. Yet it did so on a piecemeal basis, emotionally, under the pressure of constituency groups at home, sometimes almost whimsically, rejecting presidential strategy without the benefit of any substitute global strategy of its own. General George S. Brown, Chairman of the Joint Chiefs of Staff, remarked that conducting foreign policy in the United States was like being in a chess game where one of the players has a kibitzer who "occasionally reaches in and moves a piece and thereby screws it all up."

People may disagree as to whether the president or Congress, in the individual instances, proposed the right decision. But to debate that point is to miss the fundamental question, which is the method by which decisions are made. Given the present state of congressional disorganization, the choice is to have a national security and foreign policy made by the president or not to have a coherent and consistent policy at all. If one concedes an element of truth to the chess game analogy, and acknowledges that decisions on Cyprus or Angola or Indochina need to be taken with full regard for their bearing upon the central relationship with the Soviet Union, then the new assertiveness of Congress without organizational reform to match can only be cause for deep concern. The new assertiveness compounded by the new individualism becomes the new anarchy.

## Deterioration of Administrative Competence

The discussion thus far has concerned the difficulty of making policy through the legislative process. But the crisis of competence extends to administration also. Getting sound and adequate legislation passed—in the field of energy, say—is only part of the problem. The other part is achieving the legislative goals with faithfulness, dispatch, and equity.

That requires administrative skill, at all levels of the executive hierarchy. But it is the top level that is critical, for improvement of administrative skill at the lower levels is one of the responsibilities of top management, which institutes an organization's policies for selecting and upgrading the men and women who make up its staff, and then motivates, directs, and supervises them as they carry out their duties. And at the top levels of the U.S. government, administrative capability has been allowed to decline, over a long period, with a resulting loss of capacity throughout the executive branch.

This is necessarily a subjective judgment because there are no direct measures of administrative capability. But it is a judgment widely shared by the general public. The people clearly see their government as wasteful, inefficient, and "bureaucratic"—a catchall term connoting insensitivity, rigidity, and a devotion to procedure for procedure's sake. Indeed, the title "civil servant," once a term of respect, has been replaced by "bureaucrat," usually uttered as an epithet. An important element in Jimmy Carter's appeal as a candidate in 1976 was his promises to reorganize and simplify the government and eliminate waste. His civil service reform bill was supported with enthusiasm by Congress and the public because he presented it as the way to rid the "bureaucracy" of drones and deadheads. Besides being a campaign issue, administrative capacity is a legislative issue when any measure proposing a new program—national health insurance, for instance—is advanced. "Would you want the *government* to run that?" is always one of the questions asked, and the opposition gains support from the pervasive assumption that, if the government takes on responsibility for anything, it will bungle it.

But even widespread perceptions can be wrong. A conclusion that the government is in fact administratively weak must rest on other grounds. I rest my own judgment on several rather elementary propositions that, I believe, have been proved through the experience over a long period of many organizations—particularly business organizations, which prize managerial capability—and are generally accepted by them. These propositions are:

First, a person selected for a top administrative or managerial post on the basis of demonstrated administrative or managerial capacity is more likely to possess that capacity than one chosen for other qualities.

Second, a person with administrative or managerial experience is not likely to be a fully effective administrator in an organization highly dissimilar to the one in which the experience was gained until after a period of acclimatization.

Third, a person's administrative or managerial competence improves with experience, not only administrative experience in general but experience in a particular organization, until physical and mental vigor begin to decline.

If these propositions are correct, it is easily demonstrated that the U.S. government has been losing administrative capability, because each of the precepts implicit in them has been violated on a growing scale. Except for a few areas of the government that have been the domain of elite organizations—the military, the foreign service, some technical bureaus—management in the U.S. government has been entrusted to a steadily increasing number of political appointees. These are persons who are brought in by each new administration mainly from outside the government, who are chosen primarily for qualities that are distinct from administrative competence—their policy views, the constituencies they represent, the political services they have rendered, and so on—and who, for the most part, do not stay in the government long enough to become skilled governmental managers. Those who do are replaced in any case whenever the White House passes from one party to the other.

The United States is unique in this regard. Other countries severely restrict the number of political appointees placed at the head of executive departments. Those appointees function as policymakers, not as managers; management is the responsibility of a corps of career administrators with long experience, who—though doubtless there are exceptions—have risen to the top on the basis of demonstrated administrative competence. But in the United States the notion that there should be a corps of career governmental administrators who would be politically neutral, serving with equal loyalty whichever party came to power, has never really taken root (again, with the exceptions of the military, foreign service, and technical bureaus). After Andrew Jackson, at least, administrative jobs were seen as patronage, to be distributed as rewards to party organizations. When the civil service system was established, top positions were exempted, and through the years the exempt layer at the top has widened. The process has been called politicization of the civil service; it could also be termed amateurization.

The trend has been particularly marked since 1952. The quality and the capability of the civil service perhaps reached its peak in that year, for the reason that the country had seen twenty years of control by the same party, which happened to be the Democrats. This does not mean that the Democrats are more favorably disposed toward professional civil servants than Republicans, only that partisan control of the executive branch had not changed for two decades, and young persons who entered government service early in the Democratic era had risen through the ranks to high positions. Managerial jobs at the "political level" were filled in many cases by careerists, as the Roosevelt and Truman administrations learned that persons trained in the government's own bureaus not only were equal to outsiders in native talent but also had the added advantage of years of pertinent experience.

The problem was that these civil servants were assumed to be Democratic sympathizers rather than political neutrals in the tradition of a European administrative corps—and, to a large extent, the assumption was correct. They had been enticed into government service, in many cases, by the excitement of the New Deal. All their service had been under Democratic presidents. Their promotions had come from Democrats. So when President Eisenhower took office in 1953, they were suspect. Some left voluntarily, some were asked to leave, and the new administration brought in outsiders with Republican credentials to replace them.

Since then, the process has been repeated regularly, at eight-year intervals, and on a steadily expanding scale. Politicization progressed downward through the administrative levels, and outward from the Washington headquarters to regional and field offices, particularly in agencies administering politically sensitive programs. As it did so, the ceilings on the aspirations of career civil servants were lowered. The more enterprising of the careerists tended to leave; others tended to avoid responsibility and identification with the party in power. Each incoming administration, finding a career force drained of talent and enterprise, naturally looked outside. The result was politicization of more jobs, thus further damaging the career service, which provided the incentive for further politicization, and so on, in a vicious spiral.

No business organization operates that way, or could survive if it did. But management-by-amateurs is now generally accepted as the right way to run the government, taken for granted by politicians and by the general public. Establishing professionalism and continuity in governmental management, on the European model, is not even on the agenda of public issues. But it is difficult to see how the crisis of governmental competence can be overcome without a strong and conscious effort in that direction.

## Searching for Remedies

None of the five interrelated trends discussed in the preceding sections is easily reversed. They arise from fundamental forces within the American political culture, and have become more or less established habits of political thought and action. Traumatic historical events can set new forces into motion, which in turn can alter the way people think and act, but between such events existing institutional patterns remain, and solidify. However, the crisis of confidence in government the country is now experiencing may prove to be in itself a traumatic event. Some change has already occurred, and if the government continues its record of failure, advocates of more fundamental institutional change will surely gain a growing audience. Even so, consensus on specific remedial measures will be difficult to attain, even if appropriate measures can be conceived.

### *The Party System*

There is no lack, to return to the first trend, of persons who deplore the decline of political parties. Leaders of the two parties would surely like to head stronger organizations, but they have found no way to bring them into being. People do not identify with parties, join them, support them, and believe in them as an end in itself (except, perhaps, in the few places where anachronistic, patronage-oriented machines survive). Parties are embraced, rather, when people see them as useful means toward achieving some desired public policy. Parties have formed, or re-formed, at times when great issues have seized the country and polarized the voters—as the slavery question did in the 1850s, or populism and free silver in the 1890s, or relief of hunger and unemployment in the 1930s. At such times, new parties spring into being or old parties take on new meaning because they become instruments for the achievement of goals about which the voters deeply care. But such powerful issues come and go, and when they have gone the parties begin to lose relevance. The last period of polarization, when the current alignment of the two-party system was shaped, is by now almost half a century past. To young people in particular, what the parties stand for, what the difference is between them, why they matter, even why they exist, has become obscure. Revival, then, depends on something outside the party system itself—some kind of crisis that will arouse the people, polarize them, and impel them to organize politically to attain their ends. In the meantime, advocates of stronger parties can do little more than remain alert to the incidental effects on party organizations of particular legislative measures, specifically those governing elections. Public financing of campaigns, for example, can help or hurt parties, depending on whether the money is disbursed to the party that nominates the candidate or directly to the nominee.

### *Presidential Selection*

Parties would be strengthened, and some of the risk removed from the presidential selection process as well, if the trend toward proliferation of presidential primaries could be reversed. Conceivably, a retrenchment in the primary system could begin spontaneously in the 1980s in reaction to the exhaustion and the expense of the long ordeal that the presidential campaign has become. Such a swing away from the direct primary occurred early in this century; after the initial burst of enthusiasm for the new device during the Progressive Era, some eight states repealed their laws and others made significant modifications to give the party leadership more control over the choice of convention delegates. But there are few signs now of any such reversal. The voters seem to prefer the primary system. Widespread participation, open decisionmaking, and freedom from "boss control" have become accepted as political ideals. The states that have the primaries like the attention of the media and the business the primaries bring in. The party organizations that would be the natural advocates of a return to less participatory procedures hardly exist to lead any such struggle. And finally, even if some states discarded primaries in favor of choosing delegates through caucuses and conventions, the rules that require the caucuses to be open and to encourage wide participation, and that serve to discourage the selection of uncommitted party leaders as convention delegates, would undoubtedly remain. So the risks inherent in allowing tens of millions of voters, rather than party elites, to choose the presidential nominees are not likely soon to be eliminated.

### *Presidential Leadership*

In contrast to the changes in the party and electoral systems, the breakdown of presidential leadership and the accompanying new assertiveness of Congress are the result not of long-term forces but of a series of events. As the memory of these events fade—if, in other words, presidents continue to behave in the relatively restrained fashion of Gerald Ford and Jimmy Carter and continue to be open and candid with Congress—it is reasonable to expect that the same fundamental forces that brought about the modern strong presidency in the first place will again assert their influence.

That is not to say that the pre-Nixon balance of authority between the branches will be restored—nor should it be. The old norms of presidential dominance and congressional passivity contained dangers that are now clear to everyone, including members of Congress. In any case, the many profound institutional changes made in the past eight years to undergird the legislature's new importance will not be undone; Congress will not repeal the War Powers Resolution or the Congressional Budget and Impoundment Control Act, nor is it likely to disband the vastly enlarged staffs that enable it to exercise tighter control over the executive and play a greater role in the legislative process.

Yet there can be some retreat. Congress seems already to be identifying what can perhaps be called the excesses of the new assertiveness, and to be modifying them. The congressional intervention in operational decisions of foreign policy that marked the Ford administration has diminished in the Carter period. And the tide of legislative veto provisions may have crested; the sheer workload that is imposed on an overburdened Congress by each new veto clause is bound to compel second thoughts about adding any more.

So it is not unreasonable to expect a gradual warming of relations between president and Congress, a restoration of greater trust in presidential leadership, and a resultant reinstatement of the efficiency of the policymaking processes—*provided* that the lottery of presidential selection installs in the White House a candidate with a reasonable measure of the credentials necessary to become accepted as the leader of the congressional majorities. A look at the field of candidates in 1980 suggests that whoever is elected this fall will have a strong probability of acceptance as leader of Congress—if it is controlled by his own party. For the Democrats, President Carter is no longer an outsider and Senator Kennedy has never been one. For the Republicans, any president elected with Republican majorities in Congress would take office as a phenomenally powerful leader because he would take the credit for carrying those majorities into office with him—and, in 1980, that would mean unseating at least nine Democratic senators and fifty-nine representatives. In any of these circumstances, the prospects for progress toward more harmonious and fruitful relations between president and Congress would be good.

There remains, then, just one circumstance that could severely set back the progress. That would be a decision by the voters in 1980 to deny a clean victory to either party—that is, to inflict divided government once again upon the country.

In an article that concluded the volume of *Setting National Priorities* published in 1976, I laid much of the blame for the governmental ineffectiveness of the preceding years on the incessant, bitter conflict between a Republican president and a Democratic Congress.

Before any improvement in governmental performance could be expected, I argued, that error would have to be corrected, one way or the other. Either Congress should be given a Democratic president to lead it, or a Republican president should be given a Congress of his party. Let each voter choose whichever party ticket appeared superior, but vote it straight. The message was not received, of course, and in November, voters split their tickets with as much abandon as ever. Yet by the random consequence of their choosing among candidates on the basis of whatever considerations moved them, divided government was in fact ended. Later, when it became clear that Jimmy Carter was having his own troubles with Congress, I was chided as having overestimated the difference that undivided party control of government, in itself, would make.

Yet some improvement in relationships is undeniable. Presidential proposals have at least been given a hearing in Congress, instead of being rejected out of hand because they came from the leader of the opposition party. Congressional initiatives have been accepted by the president, rather than vetoed automatically. Compromises have been hammered out more readily among fellow partisans than across the party lines that previously separated the branches. As noted above, Congress has shown a marked reluctance to upset Carter's foreign policy, where it showed no such forbearance in reversing that of Ford. The tone of communication has changed; where there was loud recrimination before, there has been in the past four years no more than quiet grumbling. That in itself must have prevented public confidence from dropping further.

The promise of undivided government was limited, however, by other factors, some of which have already been suggested. In 1976, Jimmy Carter was the archetype of the outsider that only in America can be thrust largely unprepared into the top position of governmental leadership. Rarely has a new president been in a weaker position to try to act as the country's legislative leader. But, for the reasons given earlier, if the voters give the country an undivided government in 1980, these circumstances are not likely to be repeated. Those voters who mark a straight ticket for the national offices on their ballots can expect to realize in fuller measure than after 1976 the potential benefits of unified control of the executive and legislative branches.

If, despite all this gratuitous advice, the voters nevertheless choose divided government, Congress will be little better equipped than it was before its post-1973 resurgence to set the country's course. Fragmentation and dispersal of authority within Congress reflect the disintegration of political parties in the legislature as in the country, and the new individualism can be expected to prevail until new and unforeseeable issues arise to bring about the creation of a new party system or the rejuvenation of the old.

### *Administrative Competence*

As for the improvement of administrative capability, any movement toward a remedy would depend upon a higher degree of consensus than now exists as to the nature of the problem. If the analysis offered above were accepted, the way to proceed would be clear enough: the number of politically appointed, amateur managers in the government would be drastically reduced and a professional corps of career administrators would be developed to assume enlarged responsibilities. In essence, the United States would adopt the European model, with a clear distinction between a thin layer of political policymakers at the top and a neutral permanent civil service responsible for implementing the policies. The objective would be to provide each top political appointee—Cabinet member, bureau chief, and so on—with a deputy from the career service who would have the necessary experience and training, the knowledge of how to use the resources of the organization, and the managerial skills to make the policies effective.

But the decision to move in that direction would have to be made by the policymakers themselves, and for every politician in the new administration who would favor an expansion of the role of the career civil service, there will undoubtedly be many who would seek the solution to administrative incompetence by moving in the opposite direction—by supplanting more careerists with transient political appointees.

The Civil Service Reform Act of 1978, however, could conceivably prove to be a turning point in the enhancement of the status and responsibilities of the career civil service, even though it was not presented to Congress and the public as a measure for that purpose. It was put forward, rather, as a means to discipline the government's employees and to bring them, through more flexible systems of rewards and punishments, under tighter control by political executives.

And it did nothing to narrow the layers of political appointees at the top of the government's departments and agencies. Nevertheless, it did establish for a trial period a Senior Executive Service, which conceivably could evolve, if it is accepted and continued, into a professional managerial corps on the European pattern. But to move in that direction would require a conscious, deliberate decision to do so, and that would demand what does not now exist—a wide measure of national agreement.

So the crisis of competence in government is not easily resolved. Many of the trends that have brought about the crisis, and intensified it in recent years, have roots deep in the traditions of American political behavior, if not in the constitutional structure itself. To that extent, incompetence is endemic. Yet there are ameliorative measures that can be taken, and taking some may lead to creative thought that may devise still others. What is necessary, first of all, is that those who decry the shortcomings of governmental performance recognize that the fault does not necessarily lie in the individuals who happen to occupy the White House or sit in Congress, and replacing them with other individuals will not necessarily help. Severe institutional and structural problems must be addressed. Only when acceptance of that proposition is wide enough will a concerted attack upon those problems be possible.

# CONSTITUTIONAL SOURCES OF OUR DISCONTENT:

# THE DERANGEMENT OF THE PRESIDENCY

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The United States has the oldest written Constitution in the world. Its fundamental structure remains as its framers left it two hundred years ago. Yet, twentieth century conditions have forced the executive to assume powers that the framers never dreamed of, or that they meant for the legislature to exercise. The result has been a "constitutional revolution," no less fundamental for being largely unacknowledged.*

Richard Neustadt has called attention to the fact that the framers of the Constitution, in adopting the separation of powers, gave it an important twist. They provided us, says Neustadt, with a system of "separated institutions sharing powers."[2] Neustadt's formula, however, obscures a crucial distinction. The shares of power were not randomly or casually distributed. They were carefully related to the capacities of each branch, to its constituency or electoral process, and to its proper role in the system from the standpoint of republican theory.

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*Since I wrote these words, my attention has been called to an essay by Edward S. Corwin, published in 1948, in which he distinguishes between Constitutional provisions which delineate the structure the government and those which define and distribute its powers. Since 1917, he writes, through two world wars and a severe economic crisis, there have been revolutionary changes in the powers of government, but the effect of these changes on the structure of government has been slight. He concludes: "...unless we are prepared to forego altogether the values of constitutionalism, we need to give some deliberate attention to that element of the Constitution which has remained relatively unresponsive to crisis; I mean the structural element." That is the argument of this paper in a nutshell.[1]

Thus, the redistribution of functions in the twentieth century has done more than tamper with the framers' design. It has gravely disturbed its balance. It has deprived it of its grounding in popular accountability. It has robbed it of its justification in republican theory.

So the question at the bicentennial of the Constitution is not: should we revise the Constitution? The question is, can we restore the virtues of the framers' design? Can we, as a nation, understand what has happened to the Constitution? Can we make modifications, either in the Constitution itself or in its unwritten customs, that will restore accountability to our governing processes?

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From the beginning, the theory of our Constitution has been that Congress, the body that represents the people, writes the laws which determine rights, define crimes, authorize services and public enterprises, and appropriate funds, while the President, as chief executive, preserves public order, conducts foreign relations, commands armed forces, and administers public enterprises, as directed by law. This division of responsibility reflects the composition of the bodies. Congress by its size and close accountability to the communities of the nation insures that power is used as the popular will directs, while the Presidency, centering on a single individual, insures the efficient use of the nation's resources.

The Constitution's design is not neat. Ever since the First Congress, Congress by law has shaped administrative agencies and monitored the performance of the executive branch. In addition, the Senate confirms the leading appointments in the executive branch, and Congress by manipulation of the power of the purse has traditionally been able to dictate a large share of patronage appointments. On the other side, the executive has a Constitutional share of legislative power in the right to recommend measures and to veto acts of Congress, and some nineteenth century Presidents, particularly Thomas Jefferson, were able to exert considerable influence over the course of legislation by informal political persuasion.

Nevertheless, for most of the nineteenth century, the Constitution worked more or less according to the doctrine of separation: Congress by its law-making powers took the initiative in policy-making. If the performance gave cause for dismay from the framers' standpoint, it would have been in the weakness and dependence of the executive during the period of Presidential nomination by Congressional caucus (1808-1824) and in the corruption that resulted from unchecked Congressional dominance for much of the period from the end of the Civil War to the end of the century, especially 1869 to 1892.

During the twentieth century, however, this pattern has decisively changed, and the result has been a constitutional revolution. Congress continues to play a major role. It is probably the strongest, most independent legislature in the world. When it is aroused, it can exact high tribute from other elements of the system and force them to take its judgment and desires into account. Nevertheless, modernity has disturbed the Constitutional balances. Congress rarely takes the initiative in policy-making any more. In fact, it looks expectantly to the President for proposals, contenting itself with a reactive role. Moreover, it equips the Presidency to play this role with councils and bureaus and even refuses to begin consideration of many issues until the administration has submitted its proposals.

How did this shift come about?[3]

It began with the advent of total war. The first in American experience was the Civil War. For three months at the beginning of that War, (the "eleven weeks dictatorship," as Clinton Rossiter called it[4]), Lincoln governed alone, raising troops, imposing a blockade, advancing public funds without an appropriation to private agents, buying weapons and supplies, suspending the ancient writ of habeas corpus. Later, during the War, Lincoln as Commander-in-Chief directed the union's military effort, defined and redefined the aims of war, and set the terms for ending it. He also took the initiative, toward the War's end, in developing policies for reunion and reconstruction. In short, he performed as a forerunner of modern Presidents.

When war came in the twentieth century, Lincoln's precedents were there, and first Wilson, then Roosevelt, eagerly employed them. Furthermore, particularly with the Second World War, the boundaries of war became fuzzy. By the lend-lease deal before the war and by the extension of wartime emergency powers into the postwar period, Presidents assumed power to dispose of property and direct the economy without statutory authority or with only the broadest emergency powers. By the 1950s, peace had become "cold war," and the President's vast emergency powers seemed to have become virtually perpetual.

But it was not just war that disrupted the Constitution's balances. The complexity of the national economy produced a demand for regulation which could not be satisfied by statutes. The legislative process was too slow, Congress lacked expertise, and laws could not contain the requisite detail without becoming ludicrously long and complex. On the other hand, Congress was unwilling to delegate its rule-making powers to the executive branch. So it created the so-called independent regulatory commissions--independent, that is, from the President, who was forbidden to superintend or discipline commissioners, once their appointments were confirmed. This Constitutional innovation had its precedent with the Interstate Commerce Commission in 1887. It was modified and strengthened when Congress in 1913 established the Federal Reserve Board to regulate banking and control the monetary supply, and in 1914 the Federal Trade Commission, to define and prevent "unfair" commercial practices. In the 1930s the device was further adapted to regulate trade unions, securities markets and the communications industry. These commissions, combining "quasi-legislative, quasi-executive, and quasi-judicial" powers, occupied a space not provided in the Constitution.

Meanwhile, pressures for governmental services were resulting in further legislation and a proliferation of agencies in the executive branch itself. The National Park Service in the Interior Department, the Forest Service and the Bureau of Animal Husbandry in the Agriculture Department, the Weather Service and the Census Bureau in the Commerce Department, and the Anti-Trust Division in the Justice Department, among countless others, were given important functions and attracted public servants with a high degree of professional standing and commitment. Meanwhile, Congress, recognizing the temptation to convert this huge bureaucracy into a political army, created the civil service system.

Gradually, during the first quarter of the twentieth century, elected officials sensed the need to promote efficiency by a regular accounting of the federal government's activities.* Congress, concerned primarily to bring discipline and order to the proliferating operations of the executive branch, passed the Budget and Accounting Act of 1921, which placed the Bureau of the Budget in the Treasury Department and required the President to prepare an annual summary of all planned expenditures of the federal government. Until that time,

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*Curiously, the initial impulse for the preparation of a comprehensive government budget does not seem to have owed much to concern for fiscal policy as such. Public finance was still a primitive science. No one seems to have anticipated the impact that government spending was beginning to have on the economy as a whole.

Congress through its committee structure dealt with governmental activities piecemeal, and no one anywhere in government examined the fiscal policy of the government as a whole.

During the 1930s, as the New Deal brought an expanded sense of the government's proper role in economy and society, administrative science began to find a better acceptance for the notion that government ought to be run on a model analogous to the business corporation, that is, with a pryamid of authority, centering on the Chief Executive. In 1937, the President's Committee on Administrative Management, chaired by Louis Brownlow, made recommendations for strengthening the management of the executive branch. Brownlow's group called for the creation of the Executive Office of the President and urged that the Bureau of the Budget be brought into the Presidential orbit. Congress accepted these recommendations and under the same impulse acceded to a modification of its traditional authority over the shape of the Executive Branch when in the interests of economy and efficiency it gave the President power to reorganize the bureaus, subject to a legislative veto.

The culminating shift in the distribution of Constitutional power came with the gradual emergence of the President as Chief Legislator. In tracing this development, James Sundquist has noted a series of "firsts."[5] William H. Taft became the first modern President to present draft legislation to Congress. Taft's initiative aroused resentment in Congress, but his successor, Woodrow Wilson, gained acceptance as legislative leader of the national Democratic Party and instituted the practice of presenting bills to Congress in person. The press for the first time began to speak of the "administration's bills" in Congress. President Warren Harding attempted to take the matter another significant step when he addressed the Senate from the Vice President's chair urging defeat for a pending bill on soldiers' bonuses. He accomplished his immediate purpose when the bill was recommitted, but an angry debate broke out over the allegedly "unconstitutional" appearance. Senator Robert H. LaFollette insisted that the framers were "careful" to withhold from the President "any express or implied authority to oppose legislation in the making or to participate in the deliberations and debate of either House in a pending measure."[6] In 1932, President Herbert Hoover addressed the Senate on a pending revenue bill and he too stirred up a partisan hornet's nest. Since then, no President has addressed either house of Congress on a pending piece of legislation.

With the coming of Franklin Delano Roosevelt, however, the modern Presidency entered its second period of major legislative influence (the first was under Wilson), and this time the pattern proved durable. Major portions of the New Deal program were drafted at the White House or in administrative agencies, sometimes with participation by Congressmen, but on the Executive's turf. Democratic leaders in Congress acted as the President's lieutenants. And there began to be an institutionalization of the Presidential role, through the assignment of a White House aide (Judge Samuel Rosenman) to draft policy speeches and legislative messages. Under Truman came the first full-time Congressional liaison specialists, a function that was upgraded by Eisenhower and tied by Kennedy into a system of departmental legislative liaisons.

As the habit of Presidential initiative in legislative policy became ingrained, Congress began to provide the Presidency with institutional mechanisms to discharge the responsibility. Most fundamental, of course, was the Bureau of the Budget, which under Truman took control over the submission of administration bills to Congress and the development and presentation of the administration's position on pending legislation in which it had an interest. The Employment Act of 1946 established the Council of Economic Advisers. Curiously, this body was intended by Congressional conservatives as a restraint on liberal Presidents who seemed willing to ignore the harsh truths of the "dismal science," but the plenitude of economists who would tell Presidents whatever they wanted to hear has made it possible to convert the Council into a useful tool for Presidential policy-making. In 1949, Congress created the National Security Council, which has assisted the President in the formulation of defense and foreign policy. The trend continued with the legislative mandate in 1962 for a Manpower Report, and with the establishment in 1969 of the Council on Environmental Quality and in 1970 of the Domestic Council. By the 1970s, the expectation that Presidents would take the lead in proposing national policy in virtually all fields was fixed and well implemented. In each case, Congress has conspired in looking to the President for leadership in fashioning national policy and in equipping him with staff help to perform this role. The President has become Chief Legislator, not by usurpation, not even by Congressional neglect or passive acquiesence, but by positive Congressional delegation.

Why did Congress do it? There seem to have been two reasons. First, Congress lacked the capacity to act quickly and secretly, and particularly in the fields of economic management and national security, modern conditions seemed to demand these qualities. Thus, a Democratic Congress gave President Nixon the authority to impose wage and price controls whenever he deemed them necessary to control inflation, and it gave a succession of Presidents broad latitude to use military force to protect American interests in Europe, the Middle East, Latin America and the Far East.

The unique contribution of Congress lies in deliberation. Its bicameral structure and the system of careful consideration by committees insures that Congress will not act hastily or without consulting interested parties. It came to be seen as part of the genius of the Constitutional system that, when action had be be taken quickly, the President was there to do it. In a modern economy and in a world full of threatening adversaries headed by dictatorships, it seemed a blessing and a sign of the framers' prescience that the American government was equipped with a President capable of decisive, energetic, and if need be secret action, thereby allowing Congress to maintain its traditional virtues of openness and deliberation.

The other perceived deficiency of Congress from the standpoint of modern leadership is that it lacks the ability to integrate the elements of policy into a national program. Again, this weakness is the other side of a peculiar strength of Congress, namely, its ability to devote attention through its committee system to particular areas of policy. In most parliamentary regimes, bills are assigned to legislative committees randomly, which helps to bring a general perspective to bear on proposed policies, but preserves the committees' amateur standing, so to speak, as far as the substance of policy is concerned. An American legislative committee, as its members and staff accumulate seniority, becomes a formidable influence in a particular area of policy. But as Congressmen devote themselves to a particular subject in order to increase their influence, they diminish their involvement in other areas, partly because of time constraints and partly in deference to their colleagues. Meanwhile, no one in Congress devotes much time to developing a general perspective.*

There have been repeated attempts to organize Congress for a more integrated approach to policy-making, by strengthening the partisan steering committees,[7] or appointing ad hoc committees drawn from several related standing committees to draft legislation for an overarching problem such as energy or welfare reform. But Sundquist concludes that despite these efforts, there has been "no fundamental improvement in the integrative capacity of the Congress, with the single--though major--exception of the budget process."[8] And even there, the costs have been high. Places of great power have been raided and robbed of their traditional roles (in the case of the budget process, it was especially the appropriations sub-committees, but also the standing authorizing committees, that suffered diminution). And there is little in the primary incentive system, what has been called "the electoral connection," to encourage Congressmen to yield their personal leverage over particular policies in favor of greater institutional influence over the policy-making process. Most people who vote for Congressmen are not very interested in what a Congressman has done to preserve the system of separated and balanced powers.

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*Some observers argue that another factor militating against broad Congressional policy-making is that the legislative time-span is short. Members of the House serve just two years; Senators for six. The short House term especially does tend to dictate a shortened horizon for Congress. Members thinking about reelection need a record that will bear fruit quickly. But so, to only a slightly lesser degree, do Presidents. A minor but telling example: it was very difficult to get President Carter to think about the bicentennial of the U.S. Constitution. First elected in 1976 and hoping for reelection in 1980, he assumed that he would not be President in 1987.

There are other factors besides the inability of Congress to act quickly or to aggregate policies into a program that help to account for its loss of weight in the tug of war with the Presidency. Congress, composed of members of various wings of both major parties, reaches its decisions through bargaining, and it is difficult for anyone to give principled reasons for its decisions. There is bickering in the executive branch on the way to decisions, too, but it usually takes place behind closed doors, often under the protection of executive privilege. Once the decision is made, the President can announce it himself, giving the appearance of unity, decision, vigor. No wonder people look to the President rather that Congress for "leadership."

Sundquist suggests that President Nixon's triumph in the battle of the budget in October 1972--in which Congress, virtually acknowledging its impotence and incapacity, authorized the President to impound funds as he deemed necessary to achieve fiscal responsibility--marked the nadir in Congressional influence. Since then, Congress has made a partial recovery, particularly in the field of budgeting and fiscal management, but also in national security (the War Powers Act of 1973) and administrative oversight (partly through the use of the legislative veto). But he concludes that Congress has come about as far as it can come. It can never again assume leadership of the American government. Modern conditions and modern demands forbid it. Political opposition and plain incompetence may cause the President to slip from the driver's seat, but (as Senator Mansfield put it) 535 members of Congress cannot take his place. As presently organized, Congress cannot proclaim alternative national objectives and programs, and it cannot fundamentally reorganize without sacrificing its peculiar contribution to our Constitutional system. Sundquist argues that stronger Congressional leadership is not the answer.[9] Congress represents the elements of the American union. It cannot proclaim these interests with one voice. That is why the Congressional response to a Presidential address is always so weak. Who speaks for Congress? No one. But a chorus cannot conduct a symphony.

So Congress continues to call on the President to propose policies in energy, in housing, in care for the elderly, in pursuit of balanced growth. And when the White House--as in the Carter years--fails to present strong proposals, the government flounders. Congress cannot supply the defect.

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This is the current situation. It means that there must be vigorous Presidential leadership for the Constitution to work under twentieth century conditions. The question then becomes: can we have effective, accountable government under the Constitution if Presidents provide strong leadership?

This question was much on commentators' minds as the Carter Presidency came to a close. After six or seven years of effort to curb the runaway powers of the Presidency, the nation seemed to be foundering, unable to "solve" the energy crisis, curb inflation, or command respect abroad. Was it President Carter's fault, or was the problem structural? If structural, could it be solved by reforms in the Executive Office of the President, or would it be necessary (if possible) to alter the Constitution?

As of 1980, most professional observers seemed to believe that the apparent incapacity of American government was mostly President Carter's fault. Two books that appeared during the transition to the Reagan Administration seemed to summarize the feeling. One, called Politics and the Oval Office, began with a "Memorandum to President Reagan," written by Arnold J. Meltsner, professor at the Graduate School of Public Policy of the University of California at Berkeley. Meltsner's advice to the new President was to "make things work" by focusing on a short list of objectives, being consistent in public actions and using the White House staff, not to conduct routine government business, but to serve the Presidential agenda. "Select low visibility, low political cost means," Meltsner advised, "informal over formal, administrative rulings and executive orders over legislation." Much of the advice in the "Memorandum" seemed a reaction to President Carter's mistakes: Mr. Reagan was advised that he could expect to accomplish just three or four major objectives in four years, because "for each major policy initiative, a new coalition will have to be built." He was told "not [to] overload Congress" and to "avoid costly reorganization battles," and not to overuse "'media events' because they can backfire and create public cynicism." But overall the tone of the document was positive. Meltsner and his collaborators "share an optimistic view of the presidency: despite the many difficulties and problems, you (that is, President Carter's successor) can govern."[10]

The other work of this genre was by two former Carter aides, Ben W. Heineman, Jr., and Curtis A. Hessler, and it too was in the form of a "memorandum" to the President.[11] In some ways, it is a far more substantial study. It contains a detailed analysis of the issues of welfare reform and national health insurance, for instance, suggesting that these are crucial issues upon which President Carter might have been able to make some progress, had he pursued them more astutely. But the core of Heineman and Hessler's advice is the same as Meltsner's: Presidents can make the federal government work, especially if they focus their efforts intently on a short list of objectives.

Toward this end, they offer the dubious counsel that the President-elect should distinguish sharply between campaigning and governing. During the campaign, they acknowledge, it may be useful to promise all things to all people; but once in office, it is imperative for the President to concentrate on a few objectives, for "time is short and change is slow."[12]* If he does this, resolutely and doggedly, he may be able to achieve a degree of mastery over events.

In general, the tone of Heineman and Hessler's book is less upbeat than Meltsner's. Perhaps they suffer the effects of several years' service in the Carter administration, and their enthusiasm may have been tempered by the fact that they are committed to liberal policies, for which the prospects in 1980, whoever won the election, did not seem bright. Nevertheless, they accept the constraints of the given political and Constitutional system. "We have sought to be...practical," they write, "and do not recommend that the President spend much time pursuing dramatic reforms (like revitalizing the party system or restructuring the federal government through constitutional amendment to make it more parliamentary) that might help him to do his job better but do not appear likely (to say the least), however great his effort."[13] Their book, then, aims to help the President achieve liberal domestic policies within Constitutional constraints. No wonder its tone is weary. In the end, though, despite its heroic commitment, in terms of assessing the fitness of the Constitutional system for attaining coherent policy and administration, its catalogue of the obstacles is far more convincing and memorable than its recommendations.

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*A considerable part of President Reagan's success in his first two years in office stems from his single-minded pursuit of an economic program, but it has also been essential to his success that he could claim a popular mandate to lead the government in that direction. President Carter's problem was not only that his agenda was too long and his leadership mercurial, but that he was unable to claim a popular mandate for anything except honesty and efficiency.

Perhaps the most significant effort to measure the fitness of the Presidency for modern governance was a report issued in November, 1980, by the National Academy of Public Administration, entitled "A Presidency for the 1980s."[14] The report is noteworthy for its candid assessment of the predicament of American politics in the last quarter of the twentieth century. It notes that, even though activities performed directly by the federal government have declined over the past quarter century and the number of civilian federal employees has remained stable at roughly three million during that period, there has been a vast increase in the services ordered by the federal government from states and localities, private contractors, non-profit organizations, and even foreign governments. From the standpoint of public management, this development has been paralyzing. By 1980, the intergovernmental system had bogged down badly--to the point that even proponents of active government were beginning to doubt the capacity of the American system to deliver social programs. The federal budget was no longer a means of gaining control over the activities of the government.

A large portion of the federal budget consisted of transfer payments, grants, contracts, and loan guarantees, which were mandated by legislation and subject to alteration only by changes in open-ended statutes. In addition, regulations and tax provisions that were not even part of the budget process were having a profound effect on the economy.

In seeking to gain control over the situation, the Report noted that a succession of administrations had come into office promising to make greater use of the Cabinet. Yet experience had shown that the Cabinet as presently constituted is incapable of collective decision-making. The Report traces the reasons to the Constitution. The Constitution makes the agencies "the battleground on which many of the struggles between the President and the Congress are waged." It makes the Congress "the source of all executive authority." Congress has power "to create, change, or terminate programs; to specify the administrative arrangements to be employed; and to provide the funds needed to carry them out." Alongside this legislative power, the President has a "broad and unspecific mandate of executive power, his strong powers of appointment and veto, and his formidable base of informal power that rests on the stature and prestige of his office." The result of this "separation and sharing of power" has been "a turbulent and divisive relationship."[15] Cabinet members are caught in a cross-fire. They are accountable to Congress for their authority, funds and the performance of their departments, but they are accountable also to the President who appointed them, and they presumably share his general policy outlook. Even when the two branches are controlled by the same party, there are tensions between the aims of Congressional committee members and those of the President and his aides. These differences are of course greatly exacerbated by partisan bickering, not to mention opposing ideological commitments.

As counterweight to these Constitutional tendencies toward disintegration, the Executive Office of the President is not very substantial. Public administration needs firmness and persistence. Yet impulses from the Executive Office vary, not only from one administration to the next, but often during a single administration as its priorities and political strategies shift. There is no permanent secretariat at this center of executive branch activity. Modes of control over the departments and bureaus tend to be adversarial. Within the Office, separate staffs deal with different sectors; there is little integration across policy lines. Techniques for evaluating the impact of programs are not well developed. Exasperation leads to a tendenoy to intervene in line operations and to neglect the proper concerns of management.

In short, the NAPA Report contains one of the most severe and comprehensive critiques of the Constitutional "arrangement of the executive." What remedy does it propose? Its recommendations cover both institutional design and style.

Like Heineman and Hessler, NAPA argues that amending the Constitution is an impractical goal, at least for the foreseeable future. It would be terribly difficult to achieve agreement; we would probably have to be "on the brink of a breakdown in government" to gain the necessary consensus. Besides, they add, "basic reforms, however well intentioned, often have unintended adverse consequences...." It is better, they conclude, "to undertake timely reforms...within present constitutional boundaries."[16] They go on to suggest a restructuring of the Executive Office "to help the President frame and implement his national agenda in conjunction with the many other participants in our complex government system." There should be three separate units in the Executive (for economic, domestic, and international affairs), plus a planning staff and a secretariat. Above all, the staff should be small, it should seek to provide objectivity, it should represent no special interests, and it should strive for collaboration with the President's partners in government both in Congress and throughout the Executive Branch.[17]

This leads to the central recommendation of the Report, oft repeated. To realize "our collective national interests," says the NAPA panel, we must achieve greater coherence and integration in the workings of government. We must abandon our habit of confrontation, cope with the tendencies toward fragmentation (the weakening of the parties, the fragmentation of Congressional leadership, the impulse to litigate), and emphasize collaboration. That is the key word: collaboration. So much in our political traditions encourages confrontation. The Constitutional system reinforces it by separating powers and inducing ambition to counteract ambition.* But the Report says we will "gain in control" if we try to solve our problems by joint action. The President must lead the way. He must draw civil servants toward common national purposes. He must "search out and consult with potential allies in those parts of Congress that are likely to have an integrating, government-wide perspective.../giving/ special attention and serious consideration to the views of the elected leadership of Congress and to ranking members of Congressional budget committees and other major committees."[19] The Report acknowledges the inevitability of clashes between the branches and even admits that such confrontations "can help to clarify major public choices," but the clear emphasis throughout is on cooperation.[20]

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*In this connection, the Report makes the dubious assertion that, "In dividing powers among the branches and levels of government, our Constitution deliberately was designed to require cooperative unified action...."[18] Certainly Madison's discussion of the separation of powers in The Federalist, Nos. 48-51, puts a different twist on the framers' intent. Whatever the framers intended, "cooperative unified action" has been the exception, rather than the rule, in American political history.

During President Carter's last months in office, the White House Counsel, Lloyd Cutler, published an article in Foreign Affairs, entitled "To Form a Government."[21] Cutler contended that Americans had no process comparable to that of a parliamentary regime for "forming" a government, and that while the minimal demands of the American situation might have made this incapacity endurable in the past, in the present and future it would be absolutely essential for the United States to be able to compose a government and grant it authority to lead.

George Will, a pundit writing in Newsweek magazine, immediately heaped scorn on Cutler's argument. It was characteristic, he thought, for a Carter aide to blame the administration's woes on some external factor, rather than ascribe it to the incompetence of its chief. Roosevelt and Johnson had made the Constitutional scheme work. It could be made to work again, he said, though not by someone who lacked popular support, a program, and the respect of his peers.[22]

Two years into the Reagan administration, Will (who attracted notice as one of President Reagan's points of entree into the capital) must look back on that Newsweek column with satisfaction. Indeed, there is much less talk in the land about the alleged unworkability of the Constitution, less speculation about the need for radical reform in the structure and processes of government.

When Reagan was elected, the prospect was for four years of deadlock. Astonishingly, the Republicans had captured both the White House and a majority in the Senate, but the Democrats still had a clear majority in the House. It seemed reasonable to expect a muddle, four years of vetoes, overrides, and a rain of partisan recrimination. Instead, we have witnessed a political miracle. It began with the transformation of the electoral verdict. A decisive rejection of Carter became a mandate for reordered priorities (from social programs to defense) and a supply-side approach to economic management, including producer-oriented tax cuts and deregulation of industry. Then came an adroit use of the Congressional budget process, in which the White House totally outmaneuvered the Democratic leadership in the House of Representatives. (It was unkind of the President this year to criticize the budget process. Without it, his program would have been doomed in the House last year.)

Arguments have abounded about the fairness or wisdom of these policies, but Reagan's performance seems to have quelled concern about the workability of the Constitution.

In conformity with the advice given in the "memorandums," the President has put forth a radically abbreviated agenda, concentrated his own energies and his calls for public attention on two or three closely related themes, and achieved very dramatic political results. Administratively there have been rumbles about low morale in the bureaucracy, but mostly these have seemed a case of special pleading by people losing their jobs, whose services we can no longer afford.

Concern about the Constitution seems largely to have subsided. But has the Reagan performance truly shown that the Constitution "still works"? To answer that question, we need to take another look at the "constitutional revolution" of the twentieth century in light of the framers' intent.

Often we emphasize the framers' sharing of power in the national structure of government. But we ought not to obscure the main lines of distribution. Congress makes the laws, which incorporate the policy of government. The President enforces and administers those laws. The branches are set up to have the virtues appropriate for those differing functions. Congress needs to mirror the complex society from which it receives the impulses to govern. The Presidency needs firmness, energy, a certain aloofness from political pressures, and a capacity for secrecy and quick reactions to emergencies. Congress needs to be a relatively large body, so that it can reflect the society's variety, but for the Presidency, plurality was seen as a detriment, because it would have opened the way for partisan wrangling. What was virtue for one branch was vice for the other, owing to their differing functions.

The unity of the Presidency worried some of the framers. What if the enormous powers of the executive--command over the armed forces, the right to initiate appointments, discretion in enforcing the laws--fell to one party, one region, one class? The answer was that the President's powers were specific and strictly limited. He would not have a monarch's prerogative. His primary function was to "take care that the laws be faithfully executed." The "legislative power," including the power to establish offices and appropriate funds, was lodged elsewhere.*

To borrow Corwin's phrase again, we have already seen a "constitutional revolution" in the twentieth century. We need not overstate it to show that it has left a serious problem. Congress still enacts statutes, and the President still enforces and administers them. But as we have seen, the executive branch is now the locus of most active policy-making. More and more, Congress has had to resort to broad language in statutes, delegating discretion to officials in the executive branch. Much of the analysis upon which policy is based is done in the executive branch. Bureaucracy has become, in Carl Friedrich's phrase, "the core of modern government." It is probably too much to say that Congress now only reacts and declares the limits of the people's support and toleration for the schemes of the administrators. Congress has maintained its independence. There is no Crown in America. No administration has been able to control Congress by the manipulation of patronage, as in eighteenth-century England. But in foreign policy, in national defense, in domestic social policy, in budget-making, in energy, in economic management, the nation looks to the Presidency to give the lead. If he fails, the government flounders.

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*Sometimes it is said that the President shares in the legislative power, as the King of England did in Blackstone's analysis, by virtue of his veto and his power to recommend measures.[23] But the Constitution clearly vests the legislative power in Congress, then admits the President to limited, specified participation as an exception in order to "fortify" him for his own role. See The Federalist, #51.

The question is, are the Constitutional arrangements for the Presidency appropriate for this shift in functions? As the center of gravity in policy-making has shifted, have the structures of representation shifted, too? Is the Presidency related to the nation in such a way as to preserve accountability for this new and all-encompassing source of initiative?

The answer, clearly, is no. In terms of finding an authority to perform modern functions, the Constitution has been remarkably adaptable. In terms of changing to preserve electoral accountability, it has been remarkably stubborn.

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Laying aside for the moment (we will return to it) the question of whether or not it is possible to amend the Constitution, and worth any practical politician's time to think about it, let us consider what changes in structure and process might be made to broaden the accountability of the Presidency and integrate the chief executive office into the rest of the political system.

I accept as given that there are basically two political functions at the head of government. It is misleading, however, to call them legislative and executive. Certainly in the American system, the President is by now totally immersed in the "legislative" process, and Congress through its oversight functions has its hands on all aspects of administration. It is better to adopt Walter Lippmann's terminology from The Public Philosophy, where he speaks of "governing" and "representing."[24] We cannot expect Congressmen to be pleased about such language, which seems to demean their role, but even so sympathetic an analyst as James Sundquist argues that there are limits to the "resurgence" we can expect from Congress. Edward S. Corwin concluded that after the New Deal and World War II, it was vain to hope that Congress might recover its traditional role and that those who cherished constitutional values must seek structural change.[25] A representative body has a crucial role to play in a government based on consent, but it is not that of leadership.

If leadership must come from the President, how can the composition and electoral foundation of that office be changed to satisfy the twin demands of democratic values and effective government? First, it is imperative to broaden the base of accountability. Hamilton's argument for "unity" in The Federalist, #70, collapses when the President takes charge over matters involving the greatest discretion in both domestic and foreign policy. Throughout his numbers of The Federalist on the Presidency, Hamilton is at pains to depict the President's powers (to receive ambassadors, to command the armed forces, etc.) as merely ministerial. These arguments were somewhat disingenuous at the time, and by now they are patently false. The Presidential office exercises political discretion all the time. It needs to be raised on a broader base of electoral accountability.

Part of the problem is that the President exercises the broadest leadership, yet we elect just one man, whose views on the range of issues may be only dimly known at best. The prevailing concern may be to oust Jimmy Carter, but the voter also gets radically re-ordered priorities, a bellicose stance toward the Soviet Union, exploitation of the environment, and a move toward tax breaks for segregating schools.

One way to cope with this problem might be to require parties to nominate a slate of Cabinet officers, along with candidates for President and Vice President. If voters could split their ticket for Cabinet officers, we might get greater attention to the range of concerns over which the executive presides, but the cost in terms of integrating the policies of government would be unacceptable. On the other hand, if voters could cast one ballot for the whole slate, with the understanding that no officer could be forced from the Cabinet without the concurrence of the President and a certain number of Cabinet colleagues, nominators would have to consider the range of issues (as personified by potential Cabinet officers) before confronting the electorate in the general election campaign. Pre-election Cabinet-making would lend substance to the work of coalition-building before the election; it would give a measure of popular authority to Cabinet-members on the winning slate; and it would mitigate the solitary eminence of the President as the only nationally elected officer in the government.

The reform could be accomplished without Constitutional amendment, if parties simply developed the practice of nominating a slate of potential Cabinet officers as well as Presidential and Vice Presidential candidates and drafting platforms. But they would have no incentive for doing so, unless the Constitution required it. And even if the change were made, the popular verdict would still normally turn, as it does now, on a crude judgment about the performance of the incumbent, relative to the apparent capabilities of the primary challenger. In other words, the gain in detailed accountability would probably not be worth the cost in political effort to achieve the amendment.

A more promising approach would be to develop the custom of choosing Cabinet members from Congress. Corwin, who favored this proposal, argued that members of Congress (Senators or Representatives) who served in the Cabinet would not necessarily have to give up their seats in Congress, despite the provision in Article I, Section 6, which says that "no person holding any office under the United States shall be a member of either house during his continuance in office." Corwin maintained that membership in the Cabinet, even the position of head of a department, is not necessarily an "office" within the meaning of the passage cited. Technically he may have been right. But there would certainly be objections that it violated the spirit of the Constitution for Cabinet members to retain seats in Congress, and those objections would probably have the weight of tradition and public opinion behind them.

If we decide to modify our commitment to the separation of powers and integrate the political forces of the Constitution, we ought to attack the problem frontally. What keeps the branches separate is that their political fates are unconnected. In a parliamentary scheme, ordinary members rise and fall with the success of the government and (at least theoretically) backbenchers are able to keep the Cabinet responsive by the threat of withdrawing support and forcing new elections. But in our scheme, legislative and executive candidates run independently, never in two consecutive elections at the same time, and they do not hold the threat of an appeal to the electorate over one another's heads.

Two changes would help to put the President and Congress into the same political harness. First, coordinate the elective calendars. Have the President and members of the House run for concurrent, four-year terms, along with at least half of the Senators, one from each state.* In this way, most of the political forces of the nation would be responsive to the same political impulses, and it would be possible for the nation to render a coherent and effective verdict to alternative approaches.

Second, provide for the possibility of an appeal to the nation before the conclusion of the four-year term, if a stalemate develops. We now have provision for impeaching and removing from office a President who is found guilty of "treason, bribery, or other high crimes or misdemeanors." But we have no way to resolve a political impasse between Congress and the President. If the President, as the head of government, finds that he is unable to obtain consent from Congress for his program, he ought to be able to appeal to the nation for a verdict between himself and them. And Congress, perhaps by a special majority, ought likewise to be able to appeal to the nation if it judges that the President has departed radically from the mandate they jointly received at the preceding election. Provision for the ensuing special election ought to insure a vote within ninety days, to allow time for nomination of challengers by primaries, caucuses and conventions, and for a general election campaign.* It should also be made clear in the Constitution that the "lame-duck" President and Congress remain fully capable of exercising the authority of their offices until a new government is inaugurated (which ought not to be delayed until three months after the election, but should take place within days after a clear verdict has been reached).**

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*Senators might have eight-year terms, to provide a measure of stability and continuity to the system, if that were deemed desireable.

Would these changes give the United States a parliamentary system of government? No, they would not. The essence of a parliamentary system is that the legislature chooses the executive, or rather (as it has evolved) the nation chooses the executive through a competition between the parties for seats in the legislature. If no party achieves a majority of legislative seats, then party leaders in the legislature seek to piece together a coalition that can command a governing majority in the legislature.

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*Lloyd Cutler proposes 120 days, to allow 60 days for state primaries and state conventions, 30 days for a national nominating convention, and 30 days for the general campaign. I would cut the first 60 days in half. But more important than these details would be the imposition, by the Constitution, of a strict time-limit for the whole campaign. The correct way to approach that question is not to list all the features of the present campaign--the "mentioning" season, months of primaries, a period of maneuvering, then the national convention, followed by fund-raising and campaign planning, then finally the general campaign itself, followed by the electoral balloting and a possible appeal to the House of Representatives--and on that basis to calculate how long a national election must be. Instead, we should determine a reasonable time for public consideration of the issues and personalities and then count on politicians to adjust their operations accordingly. If Parkinson's Law applied nowhere else, it would be spectacularly confirmed by the busy calendar of American electoral politics.

**We do suffer for the lack of a ceremonial head of state.

The essence of the American system is to have separate, popular ballots for Congress and the President. Presidents represent the whole nation. Legislators represent districts or states. Their interaction in the making of policy induces a dialogue between broad national concerns and the particular concerns of localities and regions.[26] Calls for leadership and coherence in policy-making cannot obscure the America commitment to interaction between the union and its regions. The independence of Congress based on a separate electoral process is the best guarantee that the national government will not neglect local and regional concerns. In keeping the ballot for President and Congress separate, we would retain this independence.

At the same time, in light of the radical re-definition of the executive function, we need to fuse the political guidance of the Constitutional system. We can do this by coordinating their appeals to the nation, giving to each branch the ability to initiate a new appeal to the nation, encouraging the President to draw executive leaders from Congress, and building the custom that leaders of the administration, including the President, enter into the debate of pending measures in the Congress and submit to questions from legislators on a regular basis.

* * *

Is it likely that the nation will make changes in the Constitution in the foreseeable future? It is not. Reagan's apparent success in getting his program adopted has dealt a serious blow to any hopes for Constitutional change in this generation. If Reagan had been unable to get Congress to adopt his program, many conservatives might have joined the appeal for Constitutional revision. But Reagan's skill and luck have gravely weakened the appeal of Cutler's argument.

Yet the case for constitutional change is not dead. It needs to be recast.

A democratic constitution must provide government that is both effective and accountable. If Reagan's program for economic recovery fails, people will begin to question whether the 1980 elections gave him a "mandate" for it. In that case, particularly if the failure of his program produces painful effects (which God forbid!), people may be willing to consider revising the Constitution. It was a situation like that (economic weakness, unrest, loss of respect abroad) which enabled the framers of 1787 to overcome the almost prohibitive odds against their success.

What were the chances that the Church of Rome would liberate its policies and structures within a few years after the death of Pope Pius XII? Political scientists should approach their work more like theologians than politicians. It is better for us to notice and analyze the drift of the American system since 1900 toward radical change in the distribution of functions, and to think carefully about structural changes that might help to preserve traditional values in the midst of these changes, than to try to calculate the odds on achieving these changes. Political opportunities shift very rapidly. When the furtive chance comes, it is our job to be ready.

## FOOTNOTES

[1] "Our Constitutional Revolution and How To Round It Out," reprinted in Presidential Power and the Constitution: Essays by Edward S. Corwin, edited by Richard Loss (Ithaca: Cornell University Press, 1976), pp. 157-177.

[2] Presidential Power (New York: John Wiley, 1960), p. 33.

[3] The review that follows is drawn from two decades of study, and it is neither possible nor necessary to cite sources for each assertion. The best recent summary of these developments is James L. Sundquist, The Decline and Resurgence of Congress (Washington: The Brookings Institute, 1981). Sundquist's book is comprehensive and gracefully written, and I found it utterly convincing.

[4] Constitutional Dictatorship: Crisis Government in the Modern Democracies (New York: Harcourt, Brace and World, 1948), p. 318; cf. pp. 224-230.

[5] Op.cit., pp. 130-140.

[6] Quoted from Congressional Record, August 22, 1921, pp. 5415-5421, by Sundquist, p. 132.

[7] Donald Robinson, "If the Senate Democrats Want Leadership: An Analysis of the History and Prospects of the Majority Policy Committee," in Policy-making Role of Leadership in the Senate, papers prepared for the Commission on the Operation of the Senate, 94th Congress, 2nd Session (Washington, D.C.: Government Printing Office, 1976), pp. 40-57.

[8] Sundquist, p. 436.

[9] Ibid., p. 426.

[10] Arnold J. Meltsner, ed., Politics and the Oval Office: Toward Presidential Governance (San Francisco: Institute for Contemporary Studies, 1981), pp. 3-9.

[11] Memorandum for the President: A Strategic Approach to Domestic Affairs in the 1980s (New York: Random House, 1980).

[12] Ibid., p. 43, 29.

[13] Ibid., p. xxiv.

[14] Don K. Price and Rocco C. Siciliano were Co-Chairmen of the NAPA panel that produced this report.

[15] A Presidency for the 1980s: A Report on Presidential Management (Washington, D.C.: National Academy of Public Administration, 1980), p. 31.

[16] Ibid., p. 3.

[17] Ibid., Ch. III.

[18] Ibid., p. 3.

[19] Ibid., p. 36.

[20] Ibid., p. 42; see also pp. 2, 19, 33, 36. It is worth noting that two other recent studies of Presidential power end up by urging "comity" as the best remedy for abuses. See Arthur M. Schlesinger, Jr., *The Imperial Presidency* (Boston: Houghton-Mifflin Co., 1973), pp. 328-330; and Theodore H. White, *Breach of Faith: The Fall of Richard Nixon* (New York: Atheneum Publishers, 1975), pp. 136-138. Cf. Sundquist, pp. 478-481. To my mind, an appeal to "comity" or voluntary restraint on the part of Presidents is a counsel of despair.

[21] *Foreign Affairs*, Vol. 59 (Fall, 1980), pp. 126-143.

[22] *Newsweek*, October 13, 1980, p. 136.

[23] See, for example, E. S. Corwin, op.cit.(note 1), p. 176.

[24] Walter Lippmann, *The Public Philosophy* (New York: New American Library, 1955), Ch. V, esp. p. 48.

[25] Sundquist, pp. 425-427; and Corwin, pp. 141-176.

[26] For a brilliant interpretation of this dialogue in light of the framers' intent, see Willmoore Kendall, "The Two Majorities," *Midwest Journal of Political Science*, Vol. IV (November, 1960), pp. 317-345.

# II. PROPOSALS FOR REFORM OF THE AMERICAN SYSTEM OF GOVERNMENT

## A. Concerning Proposals To Adopt a Parliamentary System

from The New Republic, July 20, 1974

**TRB** ®

from Washington
July 20, 1974

### Turbulence Ahead

With a parliamentary system like Canada's the United States could have dealt with Watergate two months after it was discovered. With our rigid government we have instead reached a point of public helplessness that is demeaning to a great nation. It is not merely demeaning but dangerous. We face extraordinary shocks on the economic front and the President evidently does not know what to do, nor is there any quick way of replacing him. There is impeachment, of course, but that is reserved for high crimes and misdemeanors and simple economic muddleheadedness does not meet the formula. There is no lack-of-confidence vote in our system that can get an election and oust an inept leader; there is no arrangement whereby a political party itself can readily change its spokesman as the Progressive Conservative party in Canada is now preparing to do with the unfortunate Robert Stanfield after his defeat in last week's election. No, we are helpless; as James Sundquist of Brookings put it, recalling the discredited British Prime Minister who sought to appease Hitler: "Under our system, a Neville Chamberlain would stay in office for his full term even if that meant losing a war, and the very freedom of the nation."

We need a more flexible system. For example, Sen. William Fulbright, who has headed the Foreign Relations Committee longer than anybody else, is a national asset. But he was defeated in a local primary and must go. Why should a man like Fulbright—or some equivalent senator in the same fix on the conservative side—be lost under a rigid system, and not run from some other constituency, from some safe seat, to give Congress the benefit of his continuing experience?

It is stunning to cross the line that separates the United States and Canada and find the idea of transferable legislative constituencies unthinkable in the former and taken for granted in the latter. Mr. Stanfield has just run from a district in central Halifax in Nova Scotia—he doesn't live there. Prime Minister Pierre Elliott Trudeau is elected from the Mount Royal district of Montreal—he doesn't live there either. They are glad to have famous men to elect.

There are two dangers of Watergate, one that Mr. Nixon will ride out impeachment, in which case the great sword that the Founding Fathers forged for the Constitution will rust and be forgotten; the other that he will be impeached, and the nation will say, "See, now we have solved the Nixon problem and we can forget Watergate as soon as possible!" Of the two, the latter possibility could be the more dangerous if it throws away the experience we have gained and what might be the last chance of some permanent reform.

The dominance of the presidency over Congress and courts seems likely to be checked now for a while whatever happens, because Mr. Nixon has overreached himself and been too arrogant. But the same process is apt to begin again after a while because the nation needs a strong leader, and will achieve it in one way or another.

Suppose the future man in the White House had the charisma that Mr. Nixon lacks, the demagoguery of Huey Long, the effrontery of Joe McCarthy, the racism of George Wallace, and pushed his power in the paths Mr. Nixon has pointed out—impoundment, executive privilege, national security, warrantless wiretaps, sale of ambassadorships, falsification of cables, favors for campaign funds, burglary, spying and all the rest. Could we depend on the device of impeachment alone to handle the matter? Really, wouldn't it be simpler to adopt a collectivized parliamentary government or some partial adaptation of it? Half a dozen proposals are now in Congress.

The United States would never accept parliamentary "instability," it is argued, like that in Canada; it breeds coalition governments. It is odd to hear the latter argument advanced. Prime Minister Trudeau has just been reelected with a fresh mandate, and presumably he can govern for the next four years with collective party responsibility.

Things are different in Washington. I do not mean Watergate. One party controls the White House, a rival party controls the legislature and the emphasis is on negativism. Ah yes, you say, but this is the exception. Not at all. In the last 46 years the control of Congress and the White House has been split 16 years, or one-third of the time.

Often you hear it said with smug self-satisfaction, "So what? Divided government is good; one party will watch the other; the sound men of business will be the real rulers; this means less government interference. The fewer laws the better."

Business certainly is powerful. But in the real pinch can government act? You could find no better example than the terrible problem of inflation at the present time. All around the world today the economic warning signs are flashing: "Buckle seat belts, turbulence ahead!" It is the most serious international inflation in history. How badly America needs a leader it can trust!

Last week Herbert Stein, chairman of Mr. Nixon's Council of Economic Advisers, called the American economy "very strong," but also acted like the watchful airline hostess who doesn't want to frighten anybody but wants to be sure everybody is tucked in:

"We have no easy way out of this. I think we have to be prepared to continue for a long time. I think in terms of years, not months—three, four years, and more or less indefinitely, we have to follow a policy of much greater discipline."

In Herbert Hoover's Great Depression there was a Commerce Department economist named Julius Klein. Mr. Hoover would see prosperity just around the corner, and Klein would explain why. The similarities are rather striking:

Said Julius Klein in '29,
"I'm confident there's no decline!"
Said Herbert Stein, "Hew to the line,
We'll all be fine by '79."

Dr. Stein says the real blame for inflation is with the American public—they rejected "tax increases." It is an astonishing statement for the aide of Mr. Nixon who pledged in 1972: "My goal is not only no tax increase but no tax increase for the next four years."

Tighten your seat belts, turbulence ahead. Who's at the controls?

from The New Republic, August 31, 1974

## No Way to Curb the Executive

# Parliamentary Government

### by Arthur Schlesinger, Jr.

*The New Republic*'s TRB is a superb observer of affairs in Washington. I turn to him first of all when I open the magazine, read him with care and delight, deeply admire his felicity of phrase and penetrating flick of analysis and freely confess my debt to him for the insistence with which through the years he has compelled all of us to reflect on the structure of our political system. I have only one reservation. That is the way in which this astute, skeptical, sardonic surgeon of American politics suddenly turns into a hopeless romantic when he contemplates the supposed advantages of the parliamentary system.

TRB sees the separation of powers as a primary source of our troubles. He favors the unification of power, as he finds it in England and Canada, on the

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ground that it redresses the balance of power between the legislative and the executive. "With a parliamentary system like Canada's," he told us recently (July 20), "the United States could have dealt with Watergate two months after it was discovered."

I submit that this is a 180 degree misunderstanding of the advantages of the parliamentary system. I will waive for the purposes of this discussion the fact, as it seems to me, that given the nature of American political tradition, the parliamentary system is an unrealistic alternative. Centralized and disciplined parties, with primaries abolished, mavericks frowned upon, independent voting forbidden, are against the genius of the American party system. The parliamentary alternative would be unreal enough if the party system were working. At a time when the parties can hardly keep afloat in the turbulent sea of voter independence, the idea of making them more commanding and cohesive than ever before in American history is an exercise in political fantasy.

But let us assume for a moment that a full-scale break to parliamentarianism were possible. Is there any reason to suppose it would be desirable? The admiration for the Anglo-Canadian model derives, it seems to me, from a profound misconception of the parliamentary system. Take the question, for example, of the vote of confidence. The parliamentarists write as if this were the routine procedure by which one British administration gives way to another. In fact the loss of a vote of confidence has not overthrown a British government for half a century, and in that case (1924) it was a minority Labour government whose tenure in office depended on Liberal support. The last time the loss of a vote of confidence overthrew a government commanding a majority in the House of Commons was nearly a century ago in 1885. Since the vote of confidence system was not really established until 1841, the device at best did not have a very long run as a direct agency of change.

It has had, of course, a potent indirect effect. The threat of a no-confidence vote has brought about changes in Prime Ministers, as after Narvik in 1940 and after Suez in 1956. This was done by reshuffling people inside the government, not by going to the electorate and eliciting a fresh mandate. It would be as if the Republican congressional party, seeing that Mr. Nixon was in difficulty and fearing the loss of a vote of confidence, had decided to replace him with Melvin Laird or Elliot Richardson. Such substitution at the top would be impossible under the present American Constitution, which means that the no-confidence vote cannot have the indirect effect in the United States it has occasionally had in Britain.

But suppose we go all the way and introduce the ideas of dissolution into the American political order. Suppose a constitutional amendment gave Congress or the President the power to dissolve the government—both the presidency and the Congress—and call for new elections. The question is: would this strengthen the executive or the legislative? The British example leaves no doubt about the answer. The power of dissolution would play into the hands of the executive. For once legislators have to face the electorate themselves, they will not be likely to force no-confidence votes. Presidents would be able to use the threat of new elections to keep rebellious legislators in line—a development that, as Samuel H. Beer, the leading American student of British political institutions, has observed, "might well shift the balance of power even further to the side of the Executive. That has certainly been the story in Britain."

And should legislators decide to vote no confidence at whatever risk to themselves, they would gain the dangerous power, which they do not have under the impeachment clause, to dismiss Presidents on grounds of disagreement over policy. One has only to reflect what might have happened, for example, when John Adams was resisting congressional agitation for war with France or during the explosion of congressional wrath after Truman fired MacArthur. Yet in retrospect those two doughty Presidents never had finer hours. One cannot suppose that Congress will always be wiser than Presidents on policy questions. Conceivably the Founding Fathers were right in not wishing to make it too easy for Congress to get rid of Presidents.

It might well be true that an incident like Watergate would have forced out a British Prime Minister long ago. But that does not mean that Parliament and the electorate would know what had been going on. As Woodrow Wyatt, a former member of Parliament and author of *Turn Again, Westminster*, a bracing new book on British government, has written, "Don't think a Watergate couldn't happen here. You just wouldn't hear about it." The Suez crisis, for example, produced a change in Prime Ministers but no parliamentary inquiry nor public enlightenment about how the decision to go to war came about or what went wrong. The Suez cover-up was still going on nearly 20 years later. The parliamentary system lends itself most efficiently to cover-ups.

The romanticism of parliamentarists has to be checked against the realism of parliamentarians. Consider the question hour. It must be said that the notion of compelling a President to defend his policies in face-to-face confrontation with the opposition strikes an American as a useful step in the secularization of the presidency. But, as it has worked out in the House of Commons, it has become, in Wyatt's view, a "useless privilege," a "charade," a "fake instrument of democracy," "a Punch and Judy show"; "when a Minister has something to hide, Question Time has little hope of dragging it into the open." Given congressional obsequiousness toward Presidents, one doubts whether question hour would be much more effective in the United States.

The illusion of the parliamentarists is that Parliament controls the executive. The exact opposite is closer to the truth. Churchill made the point forcibly to Roosevelt in a wartime conversation. "You, Mr. President," Churchill said, "are concerned to what extent you can act without the approval of Congress. You don't worry about your Cabinet. On the other hand, I never worry about Parliament, but I continuously have to consult and have the support of my Cabinet." The Prime Minister appoints people to office without worrying about parliamentary confirmation, concludes treaties without worrying about parliamentary ratification, declares war without obtaining parliamentary assent, is safe from parliamentary investigation and in many respects has inherited the authority that once belonged to absolute monarchs. Congress, pusillanimous as it often is, is far more independent of the head of government, far more open to a diversity of ideas, far more capable of affecting executive policies, far better staffed and paid and far more disposed to check, balance, challenge and investigate the executive branch than Parliament. As Wyatt wrote in the first sentence of his book, "Parliament governs in no more than a formal sense."

While American parliamentarists look with envy at Parliament, British parliamentarians—some at least—look with envy at Congress and with particular envy on the congressional system of standing committees with professional staffs. Apart from the Public Accounts Committee, the committees of the House of Commons have little impact. Even the Public Accounts Committee is empowered only to comment on past expenditure; it cannot, like congressional committees, criticize next year's budget. "There has never been a time," Wyatt writes, "when so little effective supervision has been exercised over governments as it is today."

A strong committee system on the American style has simply been excluded by the British commitment to the union of the executive and legislative branches. Indeed nothing, Wyatt argues, has been more fatal to parliamentary influence than the principle of the fusion of powers. Confining the selection of ministers to Parliament drastically restricts the pool of talent available to government. It substitutes an irrelevant standard—facility in debate—for a relevant standard—ability in policy and administration—as the prerequisite for appointment. Worst of all, it creates "a conspiracy of common interest" to keep the executive strong and the legislative weak; for about two-thirds of the membership of the House of Commons either have been or yearn to be ministers and thereby find it in their personal interest to depress the influence of the individual MP and exalt that of the executive. "The presence of the Prime Minister, Ministers and the machinery of party discipline in the House of Commons results in its members being prisoners in their own House."

While American parliamentarists praise the centralized and disciplined parties of England, Wyatt contends that centralization and discipline have reduced the individual member of Parliament to a nonentity. The ordinary backbencher "may be the greatest orator since Demosthenes, the finest administrator since Pericles, the shrewdest judge of men since Napoleon. It will be all to no avail." Wyatt would therefore end designation of candidates by the party organization and institute a system of open primaries. He would give Parliament a fixed term. And while American parliamentarists condemn the separation of powers as a mischievous and obsolete principle, Wyatt argues with great cogency that the separation of powers is what Parliament needs more than anything else if it is to recover a serious role in the British political order. The Founding Fathers, Wyatt writes, thought that if the government were selected from Congress, the executive would infallibly dominate the legislature. (They did not think this, but no matter.) "If it were to remain a democratic force in its own right, the Founding Fathers foresaw that Congress . . . must be independent of and separate from the President's government." The way to give Parliament a serious role, Wyatt concludes, is to introduce the separation of powers into England and divorce Westminster from Whitehall.

In short as Parliament may look better from the United States, so Congress may look better from England. There is a tendency in each country to play the defects of its own legislative body against the charms of the one across the seas. No one can doubt that, craven as Congress may be, it is far more recalcitrant than Parliament—if recalcitrance is what one wants in legislative institutions. For its part Parliament has marked superiority in the promptness and efficiency with which it delivers legislation. But this, of course, is a function of weakness, not of strength. It flows precisely from the fact that under the parliamentary system the executive dominates the legislature. As a means of making the executive stronger, the parliamentary model has claims on attention. But as a means of containing an imperial executive—which is the presumed objective of the post-Watergate reformers in the United States—the full parliamentary solution is absurd.

from The New Republic, September 28, 1974

# TRB®

from Washington
September 28, 1974

## Parliamentarianism

Arthur Schlesinger, Jr., has unexpectedly become a one-man sentry warning against the parliamentary system. He is an alert sentry. I find two articles by him in *The Wall Street Journal*, another in *The Washington Post*, and now one in *The New Republic* taking me to task. The warning comes at a sensitive moment as Nixon's imperial presidency collapses, and as the same forces that keep American Presidents out of touch with reality seem to be taking effect on decent, modest, lightweight Jerry Ford.

The forces are latent in the process of making an idol of the American Priest-President, and then of pulling the idol off his pedestal. It is a cruel process. "The candidate for the presidency does well to recognize that he is running for a religious office," says Michael Novak in his new book, *Choosing Our King*. And George Reedy in his splendid little study *The Twilight of the Presidency* concludes that "some very fundamental changes are needed in the American political system"—changes that might be adapted, he suggests, from the parliamentary system.

We have seen five Presidents in this century who have lost the capacity to govern—Wilson, Hoover, Truman, Johnson and now Nixon. Will Mr. Ford be the next? He will, we fear, if he continues as he has started, unilaterally granting unconditional pardon to Nixon, making him custodian of the telltale tapes, defending the CIA in its plot to "destabilize" the government of independent Chile, and failing to find a foothold for dealing with the economy.

Leaders make mistakes abroad, too. Mr. Schlesinger spends much of his article warning that the British parliamentary system has its own faults. He deserves thanks for keeping the subject alive. We intended to say, and should have made more clear, that we don't think the US is going to go parliamentary overnight, least of all on the British system. Many US political scientists have tunnel vision and only see Britain or Europe if you suggest a change in governmental style; Canada is too big and close at hand to see. But England has a unitary system; Canada, like the US, has a federal system. And we guess that if Canada had had a scandal like Watergate it would have had an almost immediate vote of no confidence, an election, and it would have disposed of the matter in two months.

Mr. Schlesinger makes the same arguments in several of his articles: the loss of a vote of confidence, for example, hasn't overthrown a British government for half a century. We are sure he is right but it is also true that the loss of such a vote just last spring in Canada (also a minority government) produced an election. The threat of an election is always present.

To get rid of a king you kill him; to get rid of a President you impeach, or threaten to impeach, him. But to impeach you have to prove transgressions, whereas it is almost as serious for the nation to have an honorable President in the White House like Herbert Hoover who has lost his authority.

Isn't there some simpler system? Representatives like Henry Reuss, Morris Udall and Edith Green want to initiate a presidential recall power in Congress. As Sen. Mondale said last June, "We should look carefully at those aspects of the parliamentary system which can be creatively adapted to the American experience."

James Sundquist of Brookings, Charles M. Hardin of the University of Chicago, and others, agree. "Under our system," observes Sundquist, "a Neville Chamberlain who sought to appease Hitler would stay in office for his full term, even if that meant losing a war and the very freedom of the nation."

Mr. Schlesinger says the celebrated question time in Parliament isn't all that it is cracked up to be. We have heard Canadian friends, too, call it a "charade." Yet we think that if a back bencher laid down a written question to Prime Minister Trudeau demanding, "Is Canada bombing Cambodia?" and if Trudeau lied (as Nixon did), he would have been ousted almost instantly when the truth came out.

We are not trying to make debaters' points. We agree with Mr. Schlesinger that the parliamentary system is no panacea and that it may be a golden illusion for some idealists. Yet it has lessons that deserve study. One major advantage in Canada (and in other parliamentary systems) is the separation of head of government and head of state. The ceremonial head of state is Governor General Jules Leger, surrogate of the Queen (salary $50,000); the head of government is the secularized prime minister (salary around $35,000, plus perquisites) who has none of the symbolism but all of the power. Never underestimate symbols, however. Every American child is brought up to revere the presidential idol; he is as sacred as the flag; Nixon always wore a totem enameled flag in his lapel (thank God Jerry doesn't). If we had our way we would have some figurehead President, with a big salary and no power, who would live in the White House and lay cornerstones to the awe and veneration of the populace, and lead worship, and we would let some shrewd political leader from Congress head the government, answer opposition questions, consult his cabinet, and fight no-confidence votes. We would secularize the chief executive.

Congress in a year or two, we think, is going right back to the habit of handing over its problems to the President. All the pressure is in that direction.

George Reedy says that he originally intended to end his book by working out "a system of parliamentary government for America." He gave it up because he decided that such a change isn't coming "without a revolution." He agrees with Arthur Schlesinger on this. But for him the failure is extraordinarily dangerous; the system "isolates the man who holds the nation's highest office and shields him from reality." It can't last. This former adviser to Lyndon Johnson gloomily predicts "a man on horseback . . . In this probably lies the twilight of the presidency."

With all respect to the optimists, I fear we have learned little from Watergate. If an American Fuehrer appears 50 years hence, some enterprising reporter will dig back in the files and remember that it all began in an administration dedicated to law-and-order, and that the precedent for imperial pardon was established to spare Richard Nixon a nervous breakdown.

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# PRINCIPAL CHARACTERISTICS OF THE PARLIAMENTARY SYSTEM IN COMPARISON WITH THOSE OF THE AMERICAN

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# PRINCIPAL CHARACTERISTICS OF THE PARLIAMENTARY SYSTEM IN COMPARISON WITH THOSE OF THE AMERICAN

## BASIC STRUCTURE: CABINET GOVERNMENT

The identifying characteristic of a parliamentary system is that its executive is chosen directly by its legislature. In the American system, the Chief Executive, who "take[s] care that the laws be faithfully executed" (Art. II, sec. 3), is elected on the basis of votes separate from (though cast mostly at the same time as) those that determine the membership of Congress. By contrast, in a parliamentary system, the electorate chooses the members of the legislature, who in turn elect the executive responsible to direct the establishment and implementation of government policy.

Several other features common in parliamentary systems follow naturally from, though they are not strictly required by, this defining characteristic. In particular, the legislature generally not only selects, but may also at its pleasure remove, the executive. Removal is normally accomplished through the device of the "vote of confidence:" whenever legislation embodying a major policy of the executive is defeated by the legislature, the result is held to show that the executive has lost the confidence of the legislature, and is therefore bound to resign. Variations on this practice exist; under the German Federal Republic's "constructive vote of no confidence," the defeat of legislation carries the executive with it only if the legislature also votes for a specific alternative executive.

In parliamentary systems the immediate responsibility of the executive for its performance is therefore to the legislature, since in order to retain power, it must maintain continuing majority suport there. In addition, the executive responsible to the legislature in this way is usually conceived as including not only the chief executive (generally called the prime minister or premier), but also the cabinet, a group of advisors each of whom normally assumes the direction of one of the major operating departments, or ministries. The cabinet, collectively, is responsible to the legislature, in the sense that if the legislative majority is lost, the entire cabinet falls from power. In many parliamentary systems, accordingly, and particularly in the British, policy is determined by, and responsibility for policy is attributed to, the cabinet acting as a body, and not the prime minister alone. This practice contrasts with the American pattern of vesting ultimate executive responsibility in the President individually, not in him and his chief advisors collectively. This feature of a parliamentary system is generally called "cabinet government."

The cabinet is normally not only responsible to the legislature, but chosen from among its members. The executive is thus constituted not as a separate and coordinate branch of government, in the way contemplated by the American theory of separation of powers, but more nearly as an organ of the legislature. The consequences of this structural difference will be discussed below. In addition, the legislative majority to which the parliamentary executive is responsible is normally composed on the basis of party: the cabinet ministers are normally leaders of, and receive their support from, a majority party or coalition of parties in the legislature. When present in a parliamentary system, this feature generally causes it to be described as "party government." Its consequences, too, will be developed later.

It will now already be clear that the relations among the various organs of government are quite differently conceived under parliamentary than American principles. In American usage, the institutions through which society is directed and controlled are called "the government," the incumbent President and his advisors are often called "the administration," and these together with the government's operating departments are called "the executive branch." In a parliamentary system, by contrast, "the government" or "the executive" will typically refer to the incumbent prime minister and his cabinet, making these terms mean about what "the administration" does to Americans. For what Americans would call "the government," a parliamentary system would usually use the term "the state," while the term "administration" would be reserved only for the operating departments or ministries, bureaucratically organized and staffed largely by professional civil servants.

In accordance with this terminology, the prime minister in a parliamentary system is often described as the "head of government," to distinguish this position from a separate one described as "head of state." The occupant of the latter position, usually bearing the title of President or of a constitutional monarch, typically possesses little governing authority, but functions as symbolic embodiment of the state. The head of state often formally designates the person who is to "form a government" in the legislature, but is typically bound to do so on the automatic basis of legislative party strength; and the resulting government depends for its continuance in office not on his, but on the legislature's, approval.

Similarly, while in a parliamentary system each ministry of government will be directed by a cabinet member responsible for implementing party policy, each ministry will, in many such systems, also have a "permanent secretary," a civil servant at the head of its administrative apparatus, who remains in office and works with ministers from successive differing party administrations. This system, maintaining the strict separation of policy from administration, is supposed to provide both flexibility in the former and continuity in the latter.

In sum, a parliamentary system fosters a sharp distinction between the roles of "head of government" and "head of state," while in the United States, the two roles are combined in the President, and not systematically distinguished in practice. Similarly, a parliamentary system sharply distinguishes the political executive from the civil administration, whereas American usage includes both in "the executive branch." On the other hand, whereas the American system treats the executive and legislative as separate and coordinate branches of government, the executive in a parliamentary system is drawn from, and responsible to, the legislature.

The nature of this difference between the two kinds of systems may be more sharply seen by comparing both, at this point, with the anomalous system of the Fifth French Republic. There, a President with substantial autonomous executive power appoints a premier and cabinet, who possess executive authority of their own over the administrative departments of government. This arrangement represents a hybrid of American and parliamentary systems.

## SEPARATION OF POWERS

The parliamentary system thus lacks the separation of powers, between legislative and executive, characteristic of the American. The American President's authority is independent of the will of Congress; the cabinet is not only appointed by, but removable by, and hence responsible to, the

President rather than the legislature. The Senate's power to confirm appointments is a check that does not violate this basic position; Congress's power to remove by impeachment is an exception, but it is settled doctrine in the United States that policy disagreement in itself is no grounds for impeachment. In the typical parliamentary system, by contrast, the executive is formally dependent on the legislature for the continuance of its authority to govern; there is no basis of executive authority independent of the legislature's mandate. The parliamentary executive is, accordingly, routinely subject to the possibility of removal on grounds of policy disagreement.

This arrangement contrasts with the American in making impossible for a parliamentary system the phenomenon known in the United States as "divided government," in which the legislature and executive are controlled by different parties, espousing different programs. The executive in a parliamentary system will not be installed in the first place unless the policies it proposes to prosecute can command support of a legislative majority, and if they cease to command that support, it will cease to be the executive. In the United States, conversely, neither branch can vitiate the control of the other branch by its opponents on policy matters; in the case of disagreement, the only ways of proceeding are either in deadlock or through mutual adjustment.

It is also worth observing that lack of separated powers in parliamentary systems refers to the legislative and executive powers; it does not preclude an independent judiciary such as the United States possesses. Although in Britain, for example, the Law Lords sit in the upper House of Parliament, such an arrangement is neither requisite to, nor even particularly typical of, parliamentary systems as such.

In the same way, a parliamentary system does not preclude a bicameral legislature. However, since two chambers may differ in their views, the question arises in a parliamentary system of how to avoid deadlock or power struggles in the choice of an executive, which could leave the executive either powerless to act or caught in the middle. The usual solution has been to make the choice of the executive, in a bicameral parliamentary system, the prerogative of a "lower" chamber, commonly based on direct popular representation, which accordingly becomes much the more powerful chamber, while the "upper" house, often chosen on some other basis, is reduced to a secondary, advisory, delaying, or symbolic role. The general equality of power existing between the Houses of Congress finds few parallels in parliamentary systems.

## ROLE OF PARTIES

The basic principle of parliamentary government, that the executive is dependent on the legislature for the continuance of its authority to govern, is also the force that fosters another feature common in such systems: the presence of strong, well-defined legislative political parties. "Strong" here means well-disciplined; that is, a party's legislative representation will reliably support party positions in legislative voting: the government party's responsibility is to govern, and the opposition party's to oppose, as British usage has it. "Well-defined" means that there are explicit and agreed party positions for its legislative representatives to support.

These two features of parties tend to develop together in a parliamentary system. The incentive for members of the majority party or coalition to vote consistently for the government is strong where, in the absence of such voting, the government may fall and one's own party thereby be swept from power. At the same time, legislators will be unwilling to sustain a government in power that will not pursue the policies for which they installed it in the first place. By contrast, in the American system, voting against a President, or a legislative majority, of one's own party, cannot have the effect of bringing down the administration or altering the party's control of the chamber. Accordingly there is no comparably compelling reason, either against supporting whatever policies one prefers, regardless of party, or for adjusting one's party affiliation to one's policy preferences. Conversely, party leaders can seek to piece out a policy majority from various factions in both major parties, rather than having to realize a party majority as a precondition of policy victory. On this reasoning, one could conclude that the lower levels of disciplined voting and programmatic coherence in American parties, as compared with those typical in parliamentary systems, arise in part simply because the American system does not require otherwise.

A strong and well-defined party is not a necessary feature of parliamentary government; British Prime Ministers of the nineteenth century survived by mastering shifting coalitions of factions, only loosely structured into parties, and independents. However, the political necessity of retaining a majority on important issues as a prerequisite for retaining power strongly impels the emergence of disciplined, programmatic parties, and no prominent contemporary exception could be adduced. There are even historical grounds for concluding that political parties had their genesis as groups of legislators committed to the support of a given executive and its program.

Whether the prime minister possesses the power to dissolve the legislature is also important in this connection. Parliamentary systems differ in this regard; in some cases, if a cabinet is defeated, a new government must be constructed from the same legislative alignment, until the stated term of the legislature runs out. In other cases, a prime minister who has lost a vote of confidence may declare the legislature dissolved (or ask the head of state to do so), thus making new elections necessary. This power clearly adds a further incentive for party discipline, for members of a legislative majority will be less inclined to vote against the government when doing so risks bringing on an election in which their majority might be lost. Members of the minority will be correspondingly more inclined to vote against the government, in hope of forcing elections in which they might gain a majority.

## ELECTORAL CONSEQUENCES

A government with the power of dissolution may, in most cases, also use that power at its own discretion, to dissolve the legislature at a time it thinks favorable to its own electoral fortunes. Becuase of the power of dissolution, terms of office, in parliamentary systems possessing this feature, are not fixed in terms of years in the same sense as those of elected officials in the United States. A maximum term for a legislature's life is usually set (in Britain, five years), but short of that maximum, a new election may in principle occur at any time.

The power of dissolution also contributes to partisan programmatic coherence, for an election following the defeat of a government on a given issue will often turn on that issue and become a kind of referendum. The voters will be offered a clear choice of policies defined by the actual positions of the parties in the recent legislative struggle, and will have every reason to expect that the party returned with a majority will act on the basis of that actual position. To the extent that each legislative party is a bloc unified in support of an avowed general program, elections not brought on by a vote of no confidence also tend to turn on those programs. Since the nature of the parliamentary system encourages this legislative programmatic unity, in ways already discussed, the electorate in a parliamentary system is likely to have the chance much more frequently to make clear policy choices in casting their votes.

For the voter in a parliamentary system, accordngly, the choice of party is likely to be a much larger component of electoral decisions, relative to the choice of individuals, than in the United States. American voters may vote for an individual whose character or policies they prefer, with the assurance that the individual, if elected, will act in accordance with those qualities or views regardless of party. In the parliamentary system, however, the only way to promote preferred policies is to vote for the party espousing those policies, which means voting for the members of that party, who will normally vote for those policies independently of their personal character or views.

In this sense, at least when two strong parties are present, a parliamentary system offers a nearer approximation than the American to plebiscitary, majoritarian democracy, in which the will of a popular majority is directly reflected in government policy. For in such a system, a majority at the polls is more or less automatically translated into a government of the same complexion, which then controls the political resources necessary to carry out its policies. By contrast, in the American system there are at least three different sets of electoral results--for the Presidency, House, and Senate--each of which can claim to be an expression of the popular will, but may differ from the others, so that policy is more likely to represent an accommodation among several coexisting, but competing, majorities. The loose factional structure of American parties, together with the role played by non-electoral forces, then makes a single clear-cut majority position even harder to identify, and moderation, gradualism, and compromise even more necessary.

## COINCIDENTALLY ASSOCIATED FEATURES

Other features often associated with the parliamentary system are in fact not inherently, but only coincidentally, related. British practice, for instance, permits candidates for Parliament to stand for constituencies away from their place of residence. This practice allows the national party leadership to play a role in local candidate selection by making particular individuals available to local branches. It also allows the parties more control over composition of their prospective cabinets by ensuring that those selected for such positions receive safe districts to stand for. Both these practices augment party coherence by increasing the opportunities for central control. However, they are not an essential part of a parliamentary system, and are not entirely different from American arrangements anyway. The Constitution mandates only residence in the State, not the district, from which elected, and only by the time when elected (Art. I, sec. 2). Only through practice has the American system adhered to a stricter standard of residence.

In the same way, the unwritten character of the British Constitution is in no essential way connected with the parliamentary character of the system it prescribes. Other parliamentary systems, such as Canada, Italy, and the Federal Republic of Germany, are all embodied in identifiable single documents, though not always ones called "Constitutions."

Again, no necessary association exists between any particular party system and parliamentary institutions. The United States possesses a deeply rooted two-party system, but so do Britain, Austria, and increasingly the Federal Republic of Germany, while the Israeli, Italian and Scandinavian parliamentary regimes remain associated with multipartism. Where more than two important parties are present, of course, the possibility exists that no one will command a parliamentary majority. This situation requires coalition or minority government, which may be more easily subject to defeat under parliamentary institutions, but many parliamentary systems, even quite stable ones, have nevertheless operated in this fashion.

Finally, since in the United States the system of electing single candidates by plurality vote, district by district, is thought of as standard, proportional representation is sometimes thought to be associated with parliamentary government. In such a system, large districts elect several legislators each, and the seats are divided by party according to the percentage of votes cast for each party. While this arrangement further emphasizes the importance of party, rather than individuals, characteristic of a parliamentary system, it is no necessary feature of such systems, Britain being the obvious counterexample.

## SUMMARY; HISTORICAL PARALLEL

The discussion may be summarized by saying that a parliamentary system is one in which the group of persons collectively possessing the immediate executive authority of government come to office, and remain in office, by commanding majority support in the legislature. This group of persons, or cabinet, is usually drawn from the legislature, comprises leaders of a majority party or coalition there, and receives its support from that party majority. The legislative party members typically exercise party discipline in supporting an agreed party program, which is carried out by the cabinet, and on the basis of which the party makes its electoral appeal. If the cabinet is unable to secure the legislature's adoption of that program, it must in general resign on a vote of no confidence, which may be followed by dissolution of the legislature and new elections.

In short, the greatest distinction of the American from the Parliamentary system is that the executive is immediately dependent on the legislature, rather than being a separate and coordinate branch of government. The relation between the two systems might perhaps best be illustrated, in conclusion, by suggesting that the closest American approximation to a parliamentary system could be found in the House of Representatives prior to the revolt against Speaker Cannon in 1909-11. At that time the Speaker was chosen (as now) on a strict party basis, he was generally able to command united party support on important policy issues, and he selected committee chairpersons on the basis not of seniority, but of policy and factional considerations. If, in addition, the committee chairpersons could somehow have established effective control over the operation of the corresponding executive departments (perhaps by the use of the power of the purse), so that the President's effective authority became more and more limited, then something very like a parliamentary system would have existed in the United States, without anything in the American Constitution having been changed. The parallel is, of course, not exact; for example, the Speaker of the British House of Commons not only is not himself the head of government, but is an entirely impartial presiding officer independent of party discipline (though normally drawn from the majority party). Yet, if one considers the historic role of the Constitution of the United States as it approaches its bicentennial in 1987, these reflections may serve to illuminate its similarities with the constitutions of other nations as well as its distinctive features and its historic flexibility.

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# 8

# Government against Sub-governments

## A European Perspective on Washington

*Richard Rose*

> *"We must all hang together, or assuredly, we shall all hang separately."*
>
> Benjamin Franklin, at Philadelphia, 4 July 1776

Politics is about the representation of conflicting demands; government is about resolving these conflicts authoritatively and to a nation's benefit. In principle, the two activities should be complementary. In practice, politics and government can be in opposition, for what people want or what interest groups demand may not be what government can (or should) provide. A government must be responsive to popular demands to maintain political consent. Yet a government must also make decisions that are unpopular yet necessary to maintain its collective authority.

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NOTE: This was written while the author was a visiting scholar at the American Enterprise Institute, Washington, D.C., for the first three months of 1980, a particularly stimulating time to be in a stimulating environment. Useful comments and criticisms on the ideas expressed herein were received from Bruce Adams, Dom Bonafede, Colin Campbell, I. M. Destler, Leon Epstein, Hugh Heclo, Tom Mann, B. Guy Peters, Michael Pitfield, Austin Ranney, James A. Reichler, Bert A. Rockman, Harold Seidman, Lester Seligman, James L. Sundquist, Peter Szanton, and Aaron Wildavsky. The author also benefited from discussing ideas at seminars of the Kennedy School for Government at Harvard; at a conference on the Institutionalized Presidency jointly organized by the National Academy of Public Administration and the White Burkeit Miller Center at the University of Virginia; and at a joint seminar of the American Enterprise Institute and the Brookings Institution on Giving Direction to Government, organized with considerable efficiency and energy by Bradley H. Patterson, Jr. None of the above named is responsible for what the author has argued herein.

In view of the particular thrust of the chapter, it should be emphasized that the author writes from the perspective of a Truman Democrat, albeit a native Missourian who has "come a long way from St. Louis" since commencing the study of comparative politics by sailing to England in 1953, and has crossed the Atlantic many times since to study governments on opposite sides of the Atlantic.

The fundamental question facing governments on both sides of the Atlantic today is: How to combine the best of politics and government? Only if this is done can a government be open and responsive to voices demanding particular and sometimes conflicting policies, yet simultaneously have sufficient collective authority to make those big and often hard decisions that sacrifice particular concerns to a collective interest.

Nations differ substantially in how they meet the common challenge of giving direction to government. The foregoing chapters have provided ample evidence of differences among European governments, as well as major differences between the United States and European governments. The direction of government in Franco Spain and Italy differs notably from Britain and Norway. On the great circle tour of governments, Canada stands between the United States and Europe politically, combining American-style fragmentation by federalism of government functions and parties with a British form of Cabinet government.

Big differences can also be found in the way in which the same country governs itself at different times. The directing institutions of the Fifth Republic in France were a conscious reaction against the experience of the Fourth French Republic. The 1949 Constitution of the Federal Republic of Germany was even more a conscious reaction against the faith placed disastrously in leadership (the *Führerprinzip*) in Hitler's Third Reich.

Because the United States has the oldest continuous Constitution of any country examined in this book, the practical extent of change in governance is outstanding. The institutions of government found in Washington, D.C., today operate very differently from the political system that the Founding Fathers left as their heritage at Philadelphia. If scholars of American party politics can point to at least four different party systems, even more different constitutional "systems" have existed in America since 1789. The balance as well as the scope of government have changed greatly in two centuries. The character and problems of American government today more clearly resemble those of contemporary European countries than they do the United States of 200 or 100 years ago.

Within the past two decades we have altered substantially our appreciation of how and how well America is governed. Concern about "overloaded" government is common to all Western nations and the mixed economy welfare states of Western Europe have relatively greater fiscal burdens to carry than the United States.[1] America has also had unique problems. The Vietnam conflict and Watergate led to a dramatic fall in popular trust in public figures in America, extending well beyond popular disillusionment with Presidents Johnson and Nixon. Equally important, it led to changes in political parties, in Congress, and in the Presidency, each intended to strengthen popular demands against what was perceived as excessive presidential authority.

Changes in world politics have fundamentally altered America's role in world affairs. In July 1979, the President of the United States publicly proclaimed a "national malaise,"[2] while in many European countries, signs of material progress have been matched by a rebirth of political self-confidence. In economic as well as military terms, the United States can no longer consider itself the world's dominant nation. America's government must now compete with many nations that are neither remote nor are they necessarily allies. Involvement in world affairs, combined with relatively diminishing power, makes America increasingly vulnerable to events abroad. Cumulatively, these changes support the description of Washington today as the capital of *The New American Political System*.[3] The basic political question facing America today is not whether the world is changing, but *how* is it changing?

It is inverted snobbery to claim that the United States is worse governed than any other nation, just as it is chauvinistic to claim that the United States must be the best governed country in the world. The purpose of comparison here is positive, not invidious: to use examples from European experience as an empirical means of evaluating America's government today. The first object of this chapter is to compare how the United States and European governments give direction to government. The second object is to "size up" the many different policies of government in order to evaluate the relative advantages and disadvantages of contrasting approaches to making public policies. Attention is then turned to two major contemporary weaknesses in the direction of American government—the decline of party and the institutionalization of distrust. There is no intention to argue that the United States adopt European political institutions wholesale in some grand but misguided attempt to strengthen government by foreign imports. The evidence shows that there is no need to do so. Government can be improved if Americans are ready to move back (or forward) to practices that were normal in Washington until the upheaval of events in the 1970s that altered the unstable distribution of political power in Washington.

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[1] For a variety of European views of "overloaded" government, see Richard Rose, ed., *Challenge to Governance* (Beverly Hills: Sage Publications, 1980). On the causes and consequences of economic difficulties in major Western nations, see Richard Rose and B. Guy Peters, *Can Government Go Bankrupt?* (New York: Basic Books, 1978). For carefully argued discussions of America's distinctive difficulties, see, for example, James L. Sundquist, "The Crisis of Competence in Government," *Setting National Priorities: Agenda for the 1980s*, ed. Joseph A. Pechman (Washington, D.C.: The Brookings Institution, 1980), pp. 531-63; and Richard E. Neustadt, "Problems and Prospects for Presidential Leadership: Looking toward the 1980s," duplicated (Kennedy School of Government, Harvard University, 1979).

[2] Cf. President Carter's speech of July 15, 1979, in *Weekly Compilation of Presidential Documents*, vol. 15, no. 29 (Washington, D.C.: Government Printing Office, July 23, 1979), pp. 1235-1241; and two articles on "Crisis of Confidence" by Patrick H. Caddell and Warren E. Miller, *Public Opinion*, vol. 2, no. 5 (October/November 1979), pp. 2-16, 52-60.

[3] The title of a book edited by Anthony King (Washington, D.C.: American Enterprise Institute, 1978).

Since the questions raised in the following pages are political questions, the answers are rightfully matters of dispute. Analysis cannot by itself determine prescription. Those who wish a weak government will praise everything in the American Constitution (and any appropriate European example) that prevents the expansion of government's activities. Conversely, proponents of active government are likely to look favorably at European institutions that sustain big government. While analysis cannot substitute for political values, it can instruct political values and actions. A fuller understanding of how other countries are governed can also lead to a more sophisticated appreciation of the strengths of the American system, as well as a sharpened awareness of its shortcomings in the potentially more hostile world of today.

## Different Ways of Directing Government

The role of a President differs radically according to the nature of the political system. A President's powers can approach those of an Imperial ruler only in an autocracy, that is, a system that so values the authority of government that it suppresses the representation of particular interests by competing political parties and pressure groups. By contrast, a President is almost a bystander in a system of government that so values the representation of particular demands that it provides hardly any institutions to make collective decisions. Where the institutions of government are so subdivided that few issues can be resolved in any one place, there is little central direction that a President can provide, and few central decisions can be made. Writings about the American Presidency are often flawed because authors concentrate upon the President as if he were endowed with the primary powers of government.

Contemporary European and American political systems have contrasting histories. European governments have evolved in political cultures that emphasize a unitary corporate will, whether it be known as the Crown in England, the State in France, or the Nation in Germany, Italy, or Norway. An *étatiste* tradition offers values justifying a government strong enough in its collective authority to make collective decisions. But this tradition has also justified the suppression of politics, that is, the legitimate articulation of popular demands. Of the six European countries examined here, only two—Norway and Britain—have enjoyed uninterrupted representative government since before World War II.

America began as a "governmentless" agglomeration of peoples. There was politics aplenty among the scattered colonies that nominally owed allegiance to one or another Crown and effectively gave allegiance to none. Politics as the articulation of demands against government was carried to the extreme in the American Revolution. But it left the ex-colonists with the need to establish some sort of government to provide collectively for their needs. The Articles of Confederation adopted in 1781 were based on the superiority of the thirteen separate states. The articles made no provision for an executive branch, or even a central authority. The system was found to be too weak, even by indigenous standards, and the Constitution went into force. But the tradition of putting politics before government remains strong today.

The evolution of government in Europe involved the fostering of politics, that is, allowing people to make political demands through competing parties and pressure groups. Making the authority of government responsive to popular demands began in the seventeenth century in England and a century later on the continent of Europe with the French Revolution. Resting government on popular consent as well as authority took centuries to secure. In Germany, Italy, and Spain contemporary institutions of representative government have only been developed since World War II.

By contrast, the great challenge in America has been to create effective government. The Civil War showed that by 1865 there was sufficient collective authority to enforce government's will against rebellious parties. The century since has been a history of attempts, such as the New Deal, to strengthen government's capacity to reconcile popular demands with collective policies facing the problems of an increasingly threatening world.

In comparative perspective, the American system stands out because it maximizes politics. The institutions of government incorporate the representation of popular demands into the very structure of governance. Politics starts at the grass roots. Electing councillors on a citywide basis—a logical corollary of the idea of a city as a community—may be challenged in the courts as suppressing the rights of ethnic (literally, "national") groups to representation. The referendum can give citizens the power to determine their own taxes or legislation. The institutions of federalism give individual citizens and groups a multiplicity of points of access to government. In Washington, too, the policy process is porous; interest groups unite with groups of congressmen, bureaucrats, and specialist advocates, as well as with state and local government officials, to establish networks to advance particular interests.

American politics has produced a system with many sub-governments.[4] For example, one study of local government in the greater New York area was called *1400 Governments,*[5] to emphasize the subdivision of legal authority in one limited metropolitan area. But 1,400, 14,000. or 140,000 sub-governments do not necessarily add up to one government. The Founding Fathers described the American system of governance as a system of checks and balances. The checks are easy to see: the opposition of Congress and the President; the independent powers of the courts; Washington's need to cooperate with states in the federal system; the prohibitions of government activity contained in the Bill of Rights. These checks subdivide political authority and sub-governments flourish.

The balances are more difficult to discern. Nowhere is there a single institution to declare the will of the government as a whole. If any institution can claim this status, it is the Presidency, for only the President is elected by the nation as a whole. But neither Congress nor history justify such a claim. The Madisonian model of government is a system of institutionalized checks: the balance is meant to result from these checks harmonizing in a more or less coherent whole.

Any critical review of modern European history is likely to draw at least one negative lesson: Beware the pretensions of governments claiming unlimited authority. This is true whether the government is dressed in the Imperial trappings of a divinely anointed autocrat or in the pseudodemocratic trappings of a mass mobilization totalitarian state. The hundreds of millions who have experienced the excesses of such governments are the first to praise the politics of popular representation and consent.

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[4] The term "sub-governments" as a description for a well-established Washington phenomenon was given currency by Douglass Cater, *Power in Washington* (New York: Random House, 1964). For a contemporary modification and restatement, see Hugh Heclo, "Issue Networks and the Executive Establishment," in *New American Political System*, ed. King, pp. 87-124.

[5] Robert C. Wood with Vladimir V. Almendinger, *1400 Governments: the Political Economy of the New York Region* (Cambridge, Mass.: Harvard University Press, 1961).

What, if any, is the major negative lesson to be drawn from the evolution of American government? To suggest that representative political institutions are too strong risks discrediting democracy by discrediting the people. The alternative is to suggest that *collective political authority is too weak*. This view has been enunciated by almost every modern study of the Presidency. For example, President Johnson's Task Force on Government Organization under Ben Heineman described the executive branch as an ill-designed feudal regime, "a collection of fragmented bureau fiefdoms unable to co-ordinate with themselves intelligently."[6] A 1975 Trilateral Commission report questioned whether American government today allows the President the necessary authority to act in the national defense.[7] From a very different political perspective, a socialist can argue that the multiplicity of particularistic institutions hobbles effective government action on behalf of the majority of Americans.[8]

The challenge to both American and European governments today is how to combine the politics of representation with the authority of government. In practice, all of these countries practice some form of "mixed" government. But the mixture is not the same on opposite sides of the Atlantic.

**Fusing Government and Politics: The Cabinet System.** The central mechanism in European governments is collective, not singular; it is the Cabinet. A Prime Minister is first among equals in the Cabinet. But it is the Cabinet, not the Prime Minister that is responsible collectively for the activities of government.[9] A European Cabinet, like its American counterpart, consists of the heads of the principal government departments: foreign affairs, finance, justice, defense, commerce, labor, and so forth. Because the range of activities of European mixed economy welfare states is usually larger and longer established than in the United States, it might be expected that departmentally based sub-governments would be a greater obstacle to collective authority than in the United States. But this is not the case, for Cabinet members act on very different terms than their Washington counterparts.[10]

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[6] Quoted from the unpublished 1967 report of the Heineman Task Force on Government Organization in Richard Rose, *Managing Presidential Objectives* (New York: Free Press, 1976), p. 145.

[7] Conveniently available in Samuel P. Huntington, "The Democratic Distemper," *Public Interest*, no. 41 (Fall 1975), pp. 9-38.

[8] L. J. Sharpe, "American Democracy Reconsidered," *British Journal of Political Science*, vol. 3, nos. 1-2 (January, April 1973), pp. 1-28, 129-67.

[9] The reader should note that the discussion of the Cabinet system concentrates attention upon an ideal-type system in order to bring out clearly the fundamental difference between nearly every European nation and the government of the United States. The first seven chapters of this book provide ample evidence of particular national variations around this ideal type.

A Cabinet does not govern by meeting together for endless discussion. Its authority is demonstrated by the behavior of politicians acting as individual ministers. Most hold their Cabinet position by virtue of directing a major ministry (that is, a department of government). If a Cabinet minister wants to do something, it is normally done through his ministry, for within his ministry an individual minister is politically supreme. The Cabinet is important because it gives the minister his authority to direct departmental affairs. A politician placed in charge of a ministry, major or minor, has considerable scope for making decisions within the ministry's defined area of responsibilities and for carrying out policies supported by the Cabinet collectively. Moreover, a minister has at hand a cadre of senior civil servants who are not only experienced in looking after the machinery of government, but also very experienced in dealing with pressure groups.

Politics, that is, the articulation of political demands, is first of all a matter of winning a minister's ear. Pressure groups wish to press where the power to take effective action is, and in Europe they normally head for the ministries. Political demands are not suppressed, but channeled to those with executive responsibility for action. When major issues affect several ministries, such as unemployment, the access points for political demands are greatly increased. By contrast with executive branch officials in Washington, a European minister deals with pressure groups without intimidation by a legislature with the powers of Congress; without supervision by courts with the power and activist inclinations of the United States Supreme Court; and usually without the constraints of federalism as well.

In a Cabinet system, pressure groups are neither ignored nor are their wishes necessarily frustrated. Ministers are politicians who wish to be popular and, partisan values aside, they would rather say yes than no to a claimant group. Moreover, on both sides of the Atlantic, civil servants know that it is much easier to administer policies if, within limits, they are adapted to meet the particular concerns of affected groups. Cabinet government is consistent with pressure groups representing business and labor engaging in continuous consultations with a host of ministries. Social welfare ministries too attract a host of pressure groups. Although members of Parliament individually have much less influence than do congressmen, they too can be vocal advocates of particular policies. In short, Cabinet government incorporates many sub-governments.

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[10] That is, the separation of legislative and executive powers in Washington and the separate election of the President precludes the creation of a Cabinet that can effectively dominate both institutions. That is why the President's Cabinet has only a nominal existence. Federalism intensifies but does not cause the domination of sub-governments in America.

But on any given issue, Cabinet government provides a strong political counterweight to the particularistic demands of pressure groups. A minister can terminate negotiations with a pressure group if the measures it advocates are inconsistent with the policy of the Cabinet. Whenever money is involved, a minister must defer to a Cabinet colleague (the budget minister) for spending authority. If a minister misinterprets the broad lines of Cabinet policy in dealing with a pressure group, the Cabinet may refuse to sanction the agreement. Individual Cabinet ministers thus have a positive incentive to take a broader view of policies than do pressure groups. The pattern of Cabinet policy establishes guidelines for what is and is not acceptable action by individual ministers. To be sure of retaining the backing of the Cabinet, a minister must stay within guidelines applying to government as a whole.

In Europe as in America, conflicting demands are put forward by different departments. In the modern mixed economy welfare state, particular ministries are likely to become spokesmen for groups that are their prime responsibility, for example, a labor ministry speaking for organized trade unions; an industry ministry speaking for business; agriculture for farmers; and so forth. In a European coalition government, particular ministries may be awarded to coalition partners because of the specific interests they represent, for example, a socialist party awarded the labor ministry and a religious or anticlerical party assigned the ministry of education. The ministries of government institutionalize political conflict in Europe as in Washington.

Where the Cabinet system differs from the American system is in having a single collective authority to reconcile disparate political demands. Cabinet deliberations bring politics into the center of government. Ministry is set against ministry, interest group against interest group, and the ambitions of individual politicians are also at war with each other. Political temperatures rise with the importance of the issue. The authority of Cabinet does not eliminate politics; instead, the *Cabinet permits the fusion of government and politics.*

A common bond of collective political interest is the force that gives a Cabinet the effective authority to make binding decisions reconciling diverse political demands. Party is the central force behind Cabinet government. Cabinet members represent the majority party or parties in Parliament. Because of a strong bond of party loyalty uniting politicians in the legislature and the executive, the Cabinet can be confident that Parliament will endorse its actions. Moreover, the doctrine of the collective responsibility of Cabinet requires that every politician in Cabinet accept a decision and not criticize it publicly. Any minister who does not wish to do so is expected to resign from Cabinet, thus jeopardizing his future political career.

Where there are departures from this "ideal type" model of Cabinet government, the results are a restriction of government's authority. Federalism imposes one restriction upon the authority of Cabinet. In federal systems, a Cabinet must take into account the powers of other tiers of government. This results in significant differences in government between the federal systems of Canada and Germany and such unitary states as Britain and France. Where divisions within the electorate deny one party a majority of seats in Parliament, a Cabinet is restricted by the bargains necessary to maintain support by a coalition of parties. Even where single-party majority government is the rule, there are often differences of opinion within a governing party. Cabinet government permits the representation of different factions in a Cabinet, and ministers with differing outlooks must moderate their differences to maintain the Cabinet's collective authority. Italy is an extreme example of this.

The distinctive feature of Cabinet government is that all of the participants in a debate are bound politically to collective decisions. The strongest phrase is not the expression of the volition of an individual politician, but rather a collective statement: The Cabinet has decided. A Cabinet decision can be voiced in the language of command, for all ministers and civil servants are bound to accept the collective decision or resign. A Cabinet decision will always be argued as well as arguable. In retrospect, it may even turn out not to have been the best decision. But the government of the day can and does produce policies that collectively commit the whole authority of government. *In the Cabinet system, there is a government as well as sub-governments.*

**The Domination of Sub-governments: The American System.** American government is organized, but not in a way that is easily amenable to description, let alone direction. There is no single locus of authority, contrary to the views of authors of classic treatises on sovereignty or modern-day television image makers. Nor is there a clear hierarchical relationship between the different parts of American government, as in a business school organization chart. Nor, for that matter, is there a stable pattern of power that can be illustrated in a textbook diagram. The fundamental fact of American government is that political power is divided among many dozens of sub-governments in Washington, whose tentacles extend throughout the federal system. The parts are greater than the whole.

Where sub-governments dominate, there can be no expression of the collective will of government. Major policies are likely to emerge gradually as the unintended byproduct of many separate decisions taken by interested parties comprising different sub-governments. Congress is the foundation for the politics of sub-governments. The specific institutions comprising sub-governments differ from issue to issue. For any given issue, they will normally include officials from bureaus within the executive branch; congressmen and staff from committees or sub-committees on Capitol Hill; pressure groups, including relevant representatives of state and local government and public employees; and more or less free-floating policy professionals—academics, consultants, journalists, and articulate spokesmen for single issues. Although sub-governments are not recognized in the Constitution, they constitute recognizable issue networks. Hugh Heclo argues that they are increasing in scale, controversy, and political significance, while simultaneously becoming more remote from direction by the one representative of collective authority in Washington, the President.[11]

Upon entering office, an American President faces a very different problem from a European counterpart. In the Cabinet system, a Prime Minister's problem is how to give direction to a government that is *already* there, that is, organized and capable of collective action. In America, by contrast, there is no collective authority ready at hand for the President's use. "The members of the Cabinet," in the words of former Vice President Charles G. Dawes, "are a President's natural enemies,"[12] because of their tendency to become a part of a sub-government network. Even if a President succeeds in tying particular Cabinet appointees close to him, they may lose effectiveness by losing their standing in a sub-government. The President's lonely eminence may make him a symbol of American government, but in a practical sense, he is far less a corporeal symbol of government than the Queen of England. The American political system is a *multi*-government system rather than a single collective institution. A President is required to create government, that is, to discover how to use powers and institutions at hand in ways that increase his collective authority, while falling short of that inherited by politicians in a Cabinet system.

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[11] Heclo, "Issue Networks and the Executive Establishment."

[12] Quoted by Richard E. Neustadt, *Presidential Power: The Politics of Leadership from FDR to Carter*, 3d ed. (New York: John Wiley & Sons, 1980), p. 31. All subsequent citations to this volume are to the 1980 edition.

The making of the budget is a classic illustration of the fundamental difference between policy making in a Cabinet system and in the United States. In Europe, the budget is decided by Cabinet ministers. The Cabinet is the arena in which spending ministers press sub-government claims against the government's minister of finance in months of bargaining between conflicting ministries. Up to this point, the process resembles what happens between the President's Office of Management and Budget and operating agencies of the executive branch. The difference is that once a European Cabinet resolves these disputes, legislative approval is almost certain, because of the Cabinet's collective authority. By contrast, the President's budget is no more than a set of recommendations to Congress. Within Congress, different committees then scrutinize particular recommendations according to criteria of different sub-governments. The budget of the United States is not what the President recommends, but what Congress enacts. And what Congress enacts is not so much what it collectively regards as best for the nation as it is the byproduct of many different decisions by sub-governments.[13]

The strongest phrase in Washington—the President wants this—is usually voiced as an aspiration. The people whom the President can immediately command in the White House do not have their hands on the operating agencies of government. Even those whom the President appoints to direct the major departments of government are only overseers of the bureaus that collectively constitute the principal operating agencies of the executive branch. The President can fire an appointee, but this is itself an admission of failure to gain satisfaction from the person appointed. It is not an augur that he can do any better with a successor. Moreover, most of the money that the government spends is effectively uncontrollable, fixed by statutory obligations, such as pension payments or interest on the national debt. In domestic policy, the federal government gives almost as much money to state and local governments to administer as it manages itself.[14] In national security affairs, the President's position is relatively stronger as commander-in-chief, but it would be a bad thing if he spent all his time thinking of war.

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[13] The changes induced by the Congressional Budget Office are interesting in American terms, but do not alter the fundamental trans-Atlantic differences. Cf. Aaron Wildavsky, *The Politics of the Budgetary Process*, 3d ed. (Boston: Little, Brown & Co., 1979); and Hugh Heclo and Aaron Wildavsky, *The Private Government of Public Money* (London: Macmillan, 1974).

By any measure, the responsibilities placed upon the President have grown greatly since World War II. But in no sense have the President's capabilities expanded in proportion. Modern technology has created communications systems by which the President, as commander-in-chief, can literally direct a military operation halfway around the globe, but it has not created the means to make an enemy surrender at the sound of the President's voice. The personalizing eye of the television camera brings news from around the world into the living room of nearly every voter, but this is a liability to a President during a controversial war or a scandal such as Watergate. Since the time of President Eisenhower, who presided over government as a noncontroversial head of state, each President has found himself a little less popular on average than his predecessor in opinion poll ratings.[15]

Almost every writer about the contemporary Presidency emphasizes the widening gap between what a President is required or expected to do (what Richard Neutstadt calls his "clerkship" functions) and the resources at hand. Sub-governments fill the gap, dictating what they think ought to be done from the perspective of their own particular interests. At the opening of the 1980 edition of his landmark study, Neustadt points out that Presidential *weakness* is the underlying theme of *Presidential Power*. At the conclusion, he asks: "Is the Presidency possible?"[16]

In the face of increasing difficulties in giving direction to government, Presidents have appointed a number of commissions to review the operations of the federal government in search of ways to make it more "manageable." The commissions have sat for years and submitted lengthy reports. Some have emphasized the need for a President to be businesslike and encourage greater efficiency. Others have abandoned the rhetoric of the private sector and spoken of the need for leadership. Predictably, a third prescription is that a President should be both a leader and a manager.[17] None of these prescriptions has been effective. The fundamental point is that American government is not meant to be managed or led by one person. A President can no more manage the whole of government than he could manage a herd of wild horses. The President's task is to lasso what is needed for his purposes and not to attempt the impossible, riding herd over all the sub-governments of Washington.

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[14] Cf. Frederick C. Mosher, "The Changing Responsibilities and Tactics of the Federal Government" (Conference on the Institutionalized Presidency, the White Burkett Miller Center, University of Virginia, Charlottesville, March 20-21, 1980).

[15] See Hugh Heclo, "Public Expectations and the Presidency," unpublished paper (Washington, D.C.: National Academy of Public Administration Project on the Presidency, 1980), p. 5.

[16] Neustadt, *Presidential Power*, pp. xi, 210 ff., and 241. For a related argument and prescription, see Aaron Wildavsky, "The Past and Future Presidency," *Public Interest*, no. 41 (Fall 1975), pp. 56-76.

The United States has a President, as a university has a President. But as Harold Seidman remarks, "Universities may have presidents, but presidents don't have universities."[18] A university has a single figure presiding over it, chairing meetings, and representing it to outside bodies. The structure of a university, however, is designed to prevent its nominal head from influencing what goes on inside it, that is, the work of faculty in specialized departments. Executive branch agencies are analogous to departments within a university in their variety and in their desire for autonomy. The President of the United States has far more political influence than a university president and has levers for acting internationally and sometimes nationally. But the eminence of a President is a lonely eminence. The President does not normally make decisions that determine the direction of government. Instead, he issues statements that are clear or vague according to circumstances; these are only one input to a complex process of bargaining within and among sub-governments.

The President has a hard time getting a handle on government because there is no handle there. There are a multiplicity of sub-governments making particular policies by a process of partisan mutual adjustment. There are few occasions when the President enjoys a monopoly of power in government. What is often described as Presidential influence may be better described as the planned (or fortuitous) conjunction of the interest of the President and the interests of particular groups within or outside government.

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[17] The typology is adapted from Michael McGeary, "Doctrines of Presidential Management," unpublished paper (Washington, D.C.: National Academy of Public Administration, 1979). For a more detailed discussion of attempts to make government more manageable, see Harvey C. Mansfield, "Reorganizing the Federal Executive Branch: the Limits of Institutionalization," *Law and Contemporary Problems*, vol. 25, no. 3 (Summer 1970), pp. 461-95; Richard Rose, *Managing Presidential Objectives;* and Peter Szanton, ed., "Papers on Government Reorganization," unpublished (Washington, D.C.: Administrative Conference of the United States, 1980).

[18] Harold Seidman, *Politics, Position and Power*, 3d ed. (New York: Oxford University Press, 1980), p. 135.

In the United States, there is no equivalent to the authority of a Cabinet in Europe. The Supreme Court is the one institution that, under certain limited circumstances, reconciles conflicting political demands and does so with final authority. The Supreme Court can do this because it is the custodian of the Constitution, and the Constitution is the ultimate authority in the Amercian political system. Supreme Court decisions are accepted by politicians and bureaucrats with an authority denied a Presidential request. But because its powers of decision are final, the Court is often cautious when it contemplates a case with major political implications. In the words of one legal scholar, the justices today "follow the normal Washington tactic of letting the issue stew for a while so that there is an opportunity for all to be heard and for the decision maker to absorb what is to be heard. They often make tentative or partial experiments in new areas before going the whole way. . . . When they miscalculate they sometimes retreat a bit."[10] Supreme Court action on race relations, when it ordered fundamental changes "with all deliberate speed," illustrates how the Court can, within fields amenable to judicial action, face up to sub-governments' conflicts and resolve them with binding decisions.

The authority of the Supreme Court is much less than that of a Cabinet, however, because a Cabinet can and must be concerned with the manifold of public policies. By contrast, a court can only be concerned with justiciable issues, which are often procedural rather than substantive. But in most fields of public policy the Supreme Court simply sets very broad constitutional parameters for policy makers. It cannot and does not give positive direction about the major substantive problems facing the country such as the economy, national security, or energy.

**Lopsided Government.** The essential similarity between American and European governments today is their openness to politics. On both sides of the Atlantic, institutions of contemporary government give great scope for individuals and organized interests to press their particular demands on government. In the United States, the federal system and the powers of Congress institutionalize this openness to an extreme degree. In European countries, even in a state without elections such as Franco Spain, interest groups press their demands upon ministries.

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[10] Martin Shapiro, "The Supreme Court: Frpm Warren to Burger," in *New American Political System*, ed. King, p. 27.

Nonetheless, there remains an ocean of difference between the collective authority of a Cabinet and the American political system. The primary contrast is a matter of balance—or the absence of balance. The Cabinet provides collective authority sufficiently strong to reconcile differences among sub-governments. The force of a Cabinet is not that of a dictator; instead, it is the force of government based upon elected politicians with common loyalties and a common need to secure reelection. Conflicting interests can and do state their case in Cabinet. But after that is done, there is a government there, that is, a Cabinet with the political and institutional strength to reconcile differences.

The American system, by contrast, is best described as lopsided, because the power of sub-governments is so great in relation to collective authority. The Supreme Court can make decisions binding upon other branches of government, but its authority is strong only when other branches act unconstitutionally. It is far too simple to dismiss the lopsided strength of sub-governments in the United States as a consequence of the Constitution, and therefore unalterable.

The Constitution fixes major institutions of government, but it does not determine their relationships or the bulk of their activities. The most important changes in modern American politics have occurred independently of constitutional amendments, which since 1920 have been trivial in political significance. Neither the New Deal nor the global political commitments undertaken by the United States after World War II required constitutional amendments. The role of Congress, of political parties, and of the bureaucracy alters without constitutional amendment. At any given time, there is an "unwritten constitution" influencing power in Washington. Like any unwritten document, it is amenable to change.

If the American system is changing, the question follows: How *should* it be changing? For more than a decade, the power of sub-governments has been growing. Without the means of making collective decisions effective, there is no way in which any elected official can reconcile the conflicting views of many competing sub-governments. But trends are not immutable, least of all in institutions as open and responsive as those constituting the unwritten constitution of the United States. The pages that follow consider ways in which the American system could alter in the future. None of the changes considered depends upon constitutional amendment, and none depends upon a few simple devices of institutional engineering. The structure of a nation's politics is not solely a matter of institutions. It is also determined by how well politicians adapt institutions at hand to the problems that confront the country.

### Sizing Up Public Policies

Problems of public policy come in many different sizes. A decision about whether to put a stoplight at an intersection or build a community swimming pool is a decision of government, just as is a decision about national wage and price controls or building a neutron bomb. When the impact of public policies differ greatly in size, there is good reason to want different decisions taken by institutions of very different scale. Questions of local traffic or recreation can be decided by a local council or a local referendum, whereas questions of national impact require effective decisions by a national government. Every political system requires the capacity of miniaturization, that is, the ability to make small-scale decisions. Equally, it requires the capacity to mobilize collective authority to make big decisions for the nation as a whole.[20]

A wise nation adapts its political structure to the size of the problem at hand. We do not need to submit all our problems to the collective authority of national government, but neither can we do without the benefits of collective authority. What we need to do is identify under what circumstances different types of government deal best with different types of problems—and then consider whether the American political system is properly sized for major challenges that confront it today.

**The Strengths and Limits of Sub-governments.** The American system of politics is especially good at dealing with a large number of small-scale decisions. Contrary to the arithmetic logic of democracy as majority rule, the American system can respond quickly and easily to the particular concerns of smaller groups because of the existence of so many sub-governments. The federal system divides substantial governmental powers among thousands of territorial sub-governments, with populations of anything from a few hundred to California, with a population larger than all five nations of Scandinavia. The openness of the political system to popular participation is taken advantage of by organized groups as well as individuals. In Washington, the philosophy of giving everybody "a piece of the action" reaches its ultimate expression in the contemporary Congress, where 535 congressmen each try to represent their small fraction of the American people and service the demands of individual interests and voters within their own district.[21]

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[20] For favorable discussions of disaggregating decisions, see especially C. E. Lindblom, *The Intelligence of Democracy* (New York: Free Press, 1965) and Mancur Olson, Jr., *The Logic of Collective Action* (Cambridge, Mass.: Harvard University Press, 1965). For this writer's views, see Richard Rose, "Coping with Urban Change," in *The Management of Urban Change in Britain and Germany*, ed. R. Rose (Beverly Hills: Sage Publications, 1974), pp. 5-25, and R. Rose, *What is Governing? Purpose and Policy in Washington* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1978), p. 125 ff.

The strength of sub-governments in America is rooted in the political philosophy of pluralism, a celebration of the variety of American life and a desire to provide institutions that respond to some needs of every group of citizens.[22] Fourth-class cities are created to deal with fourth-class problems, and counties whose boundaries were determined by travel time in a horse and buggy continue to play a significant part in the sub-government of America. To decry the institutional atomization of contemporary American politics is to miss an important point. An atomized political system should be good at making small-scale political decisions. Equally, to decry "majorities of the moment" is to overlook the fact that shifting coalitions enable individuals to satisfy different political demands by combining in different ways.[23] To decry the strength of market forces in American society is to ignore the extent to which mutual adjustment in the marketplace can meet some demands far better than centralized decision making, a proposition that is as true in politics as it is in economics.[24]

The conventional way to resolve the inevitable conflicts between sub-governments is to rely upon political brokers. Brokers are not sources of authority. However, they play a critical role in negotiating agreements between and within the many sub-governments. The primary function of a broker is to secure a majority for some policy, whatever its content. If a leader is defined as a politician who influences the views of others, then a broker can be defined as a politician who accepts the views of others for the sake of creating a majority. If there is not a sufficiently broad consensus to create such a majority, then inaction is the expected outcome. Sub-government politics often lead to nondecision making, when the number of more or less autonomous groups involved is large, and some refuse to reconcile their conflict in a brokered consensus.

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[21] See, for example, Morris P. Fiorina, *Congress: Keystone of the Washington Establishment* (New Haven: Yale University Press, 1977), and Richard Fenno, *Home Style: House Members in Their Districts* (Boston: Little, Brown & Co., 1978).

[22] See, for example, E. Pendleton Herring, Jr., *The Politics of American Democracy* (New York: Rinehart & Co., 1940). Contrast T. J. Lowi, *The End of Liberalism* (New York: W. W. Norton & Co., 1969).

[23] The complaints are voiced by Anthony King in his conclusion to *New American Political System*, pp. 389, 391.

[24] Cf. Lindblom, *Intelligence of Democracy;* Alec Nove, *The Soviet Economic System* (London: Allen and Unwin, 1977), and C. E. Lindblom, *Politics and Markets* (New York: Basic Books, 1977).

The advantage of exercising authority on a smaller scale than the national level is shown by the fact that in the past two decades most European governments have faced political demands to disaggregate authority and to provide increased opportunities for popular participation and regional decision making. The growth of the welfare state has also led European governments to adopt a variety of devices to reduce the role of ministries in making or delivering such basic welfare services as health, housing, and social work. Where responsibility for policies remains concentrated in national ministries, there is a growing attention to pressure groups clustering around them. Simultaneously, demands to decentralize or devolve authority to regions or "nations" demanding greater autonomy have been voiced, and voiced vigorously, in Britain, Canada, France, Italy, and Spain.[25]

Big issues require decision making by government collectively, for they raise questions that commit the country as a whole. International affairs is the most obvious example, for half a nation cannot be at war with a foreign power while the other half remains at peace. An all-or-nothing choice, binding on everyone, must be made. Major issues of macroeconomic policy also require collective decisions of government. For example, a government must make central decisions about monetary policy, for if half of its citizens normally deal in foreign currencies, then it no longer has effective authority in the national economy. Energy policy is a third contemporary example of the need for central decisions. While individuals may decide what kind of home heating or what type of transportation to consume, only a government can determine collectively what quantity, price, and mixture of imported and domestic energy resources will be available to individual consumers.

The issues of greatest concern to government are aptly described as collective, for they have a pervasive effect upon society as a whole. As such, they are appropriate for determination by a government elected to look after the major concerns of society as a whole. When issues arise that affect all citizens collectively, such as matters of war and peace, then some part of the nation must decide for the whole. When inflation arises, collective action offers means of counteracting inflation that cannot be taken by individuals. When oil is in short supply, an individual may wish to buy a lot of gasoline cheaply, below world prices. But if the collective effect of millions of people doing so is to jeopardize a nation's economic or military security, then decisions are properly made by government. A popularly elected government has a better claim than any sub-government or private organization to determine national policy.

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[25] See, for example, James Cornford, ed., *The Failure of the State* (London: Croom-Helm, 1975).

Major collective issues are literally vital because they concern the defining attributes of the modern state. Modern government commenced with the creation of authorities strong enough to provide national security, impose domestic order, and sustain an economy in the face of tariffs by principalities, baronies, and lesser jurisdictions in Europe and in dispersed colonies in America. The growth of government, particularly in the twentieth century, has added many more responsibilities. Today, social welfare policies make first claim upon the government's material resources, but the defining responsibilities of modern government necessarily remain its first priority.[26] Any modern state must deal effectively with these problems or cease to be a sovereign state.

Big, pervasive problems have major consequences spilling over into many areas. For example, energy problems have implications for the economy and for national security; national security problems have major economic implications; and economic problems have a major impact upon money available for social services as well as upon a country's status in the world. If decisions were only made by sub-governments, then every sub-government would become the object (or victim) of decisions elsewhere in government about which it was not consulted.

Collective problems require a collective response. The politics of sub-governments is inadequate to resolve conflicts about issues of pervasive importance to society. Sub-governments come into conflict with each other, and decision making is made more difficult, as perhaps it should be when large stakes are involved. Conflicts can only be resolved by something larger and stronger than particularistic political networks, namely by the collective authority of government.

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[26] See Richard Rose, "On the Priorities of Government: A Developmental Analysis of Public Policies," *European Journal of Political Research,* vol. 4, no. 3 (1976), pp. 247-89.

## GOVERNMENT AGAINST SUB-GOVERNMENTS

Although important collective issues might be expected to unite politicians in the name of a putative national interest, their immediate impact is to generate politics as usual. In default of an authoritative definition of the "national" interest, different sub-governments are each free to advocate views that are not so much selfish as they are narrow and particular. Each department has a different perspective on multifaceted national problems. For example, a Defense Department may see an international issue as a military problem, whereas the State Department may see it as a diplomatic problem.[27]

In their initial response to complex collective issues, governments in Europe and America tend to act similarly, for the advocacy of competing views is built into the policy process. It is welcomed philosophically, for Europeans and Americans both tend to believe in the free competition of ideas in the marketplace. It is institutionalized politically, by rights of free speech and the stimulus to debate given by party competition. And it is present organizationally by the conflicting interests of different government departments or ministries.

Collective problems normally involve a number of different sub-governments. Everybody wants to get into the act when an issue is "hot" politically and affects their interests. For example, in addition to energy agencies, environmentalists, national security agencies, and treasury officials will have views about the use of natural resources. A collective problem is disaggregated into its component parts for consideration separately by different departments, each from its own point of view. The resulting recommendations will not meet the requirements of a collective policy. Instead, they will be a laundry list of particular concerns, requiring reconciliation by the authority of government. Such conflicts cannot easily be resolved by asking brokers to intervene. Attempts to arrive at a consensus are likely to lead to inaction, when major sub-governments disagree about what is the nation's interest.

By definition, collective problems cannot be resolved by the conventional method of providing something for everybody. For example, farmers and motorists cannot be given cheap energy, while advocates of energy conservation are given higher prices. When collective issues have "zero sum" properties (that is, what one group wins the other must lose), then there must be sufficient collective authority in government to enforce decisions upon losers as well as winners.

**Giving Government the Priority.** The political problem forced forward by collective issues is: How to get a collective decision? When interests conflict and departments recommend mutually exclusive alternatives, a conscious choice is needed. The risks and costs of making a decision cannot be avoided; that is in the nature of politics. What is variable is whether a policy is merely the byproduct of separate sub-governments pursuing particularist interests, or is a conscious and singular decision about what is good for the country collectively.

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[27] See Graham Allison, *Essence of Decision* (Boston: Little, Brown & Co., 1971).

The Cabinet system differs greatly from the American system when confronted with the need to make a collective choice. A Cabinet can invoke the power of government against politics *because there is a government there.* A Cabinet can produce a "shut up" decision, that is, a decision that must be accepted by all the affected ministries. The decision may be complex and contain a number of compromises. But it is nonetheless a political decision, making choices and stating them in a way that is binding upon sub-governments.[28] Each member of the Cabinet must either go along with the decision or resign from office. That is the price that individual politicians pay for being part of a Cabinet government.

By contrast, the United States lacks a single institution that can effectively assert the collective authority of government on major issues of the day. In the Madisonian system of dispersing power, there is no assurance that any decision will be made. Whereas a lawyer would think it odd if, after a lengthy judicial hearing, the Supreme Court refused to issue any decision or its decision was ignored by other courts, we do not think it odd when there is no decision in Washington about a major collective issue.

The benefits of sub-government policy making are real and continuing, but they are also limited. At a time when the collective problems facing the United States are both immediate and of great importance, it is particularly costly to make decisions in bits and pieces that do *not* add up to a collective policy. Moreover, it is increasingly difficult to find the extra resources needed to invest (or waste) in making big decisions in small ways. The price can be just as high for the United States as the price the Soviets pay for having an overcentralized economy.

Because the agenda of political issues facing the United States in the 1980s is dominated by collective problems, there is now a need to strengthen the collective authority of government as well as maintain the established authority of sub-governments. The American problem is not that the sub-governments are too strong. The opposite is the case: *The countervailing collective force of government is too weak.*

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[28] In many circumstances, especially economic policy, a decision may involve "trade-offs" or compromises. The point here is that there is a big difference between compromises consciously made by a collective authority and compromises that are simply the byproduct or result of conflicts between sub-governments.

The President is the official most concerned with problems of the nation collectively, because he is elected by the nation as a whole. The authority of the President to order the dropping of an H bomb is often cited as proof of the awesome power that one politician can have over mankind's collective fate. Yet this prompts the question: What does the President do when he is not dropping H bombs? The answer was given by President Truman many years ago: "I sit here all day trying to persuade people to do the things they ought to have sense enough to do without my persuading them." [29] The President is not so much the chief decision maker in American politics, as he is the chief persuader. The institutions to which he applies his powers of persuasion are the sub-governments of the United States. He proposes, but they dispose of most public policies, whether large or small.

The conventional way to recommend strengthening government is to suggest strengthening the Presidency. The "backlash" against the White House of the early 1970s appears to have subsided, and calls for a "strong" President once again resound. The prescriptions lead in a variety of directions.

The simplest advice concerns the personal character and behavior of the President. Be wise. Be firm. Be popular. Be good. But such injunctions, however well intentioned, risk failing through naiveté. Stated negatively, they are unexceptionable. Who would want a stupid, weak, unpopular, and evil President? If followed literally, however, they can lead to defects arising from an excess of these virtues. A President may be handicapped if intelligence leads to indecision, if firmness leads to stubbornness, if a concern with popularity leads to enslavement to opinion polls, or if goodness is pursued to the point of self-righteousness.

More meaningful are injunctions about the political behavior that an individual President should pursue. Particularly relevant here is the approach of Richard Neustadt, whose theme is the politics of personal power: "What a President can do to make his own will felt within his own Administration; what he can do, as one man among many, to carry his own choices through that maze of personalities and institutions called the government of the United States." [30] While Neustadt emphatically declares his allegiance to the cause of promoting

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[29] Quoted from Neustadt, *Presidential Power*, p. 9.

[30] Neustadt, *Presidential Power*, p. v.

Presidential power, the words in which he does so pay tribute to the power of the sub-governments of the United States.

As government has grown bigger (a process often assumed to make it less manageable or even unmanageable), Presidents have turned to the nostrums of management in search of authority: reorganize; plan; coordinate. These prescriptions are typically voiced by persons who wish the President (or, at least, staff in the Executive Office of the President) to assert collective authority against a multitude of sub-governments. Logically, the call for coordination is appealing because it appears to address the problem of reconciling conflicting views of sub-governments. But as long as sub-governments are strong, coordination is bound to be weak. Coordination can work well only after the power of sub-governments is overcome or where there is little or no conflict about "apolitical" issues. European experience shows that planning, too, is more attractive in theory than in practice. Even if (a heroic assumption) useful planning documents could be produced in Washington, they would be of limited value without a collective authority that could act authoritatively upon a plan. The reorganization efforts of Presidents Nixon and Carter have shown how little scope there is for major institutional change; the people who have organized the many sub-governments wish to keep things as they are.[31]

An easy prescription to accept is that the President should receive the views of a multiplicity of advocates.[32] By actively soliciting views from different sources, a President can check one source of information against another and prescriptions for one policy against another, incidentally making a virtue of a major feature of sub-governments. This goal is easy to achieve, for the major problems that the President considers are by their nature multidimensional. At a minimum, the White House should have staff sufficiently detached from departmental loyalties and sufficiently committed to the idea of "due process" in policy making so that the President does in fact receive the views of all relevant sub-governments before he makes a decision. But the more the President is given the differing views of multiple advocates, the harder his job is likely to be. As President Warren Harding once moaned: "I listen to one side and they seem right and then I talk to the other side, and they seem just as right, and there I am where I started. . . . God, what a job!"[33]

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[31] For an up-to-date review, see the collection of papers produced by Peter Szanton, ed., "Papers on Government Reorganization," especially Allen Schick, "Alternatives to Reorganization"; and Seidman, *Politics, Position, and Power*, chap. 5.

[32] See Alexander L. George, "The Case for Multiple Advocacy in Making Foreign Policy," *American Political Science Review*, vol. 66, no. 3 (September 1972), pp. 751-951, including comments by I. M. Destler.

The President's job is not just to listen to the views of sub-governments but also to resolve disputes between them. No procedures or institutions will be of value to a President in the absence of the collective authority needed to make decisions binding upon sub-governments, as can be done by a Cabinet. Reviewing the major collective problems facing the United States today emphasizes how difficult it is for the President (or any other part of American government) to do that because the American system values sub-governments more than government.

In international affairs, the United States government has a well-established set of institutions for making policy under Presidential authority.[34] The National Security Council gives institutional expression within the White House to a large complex of agencies and interests. But the circumstances in which the President's authority is sufficient to make foreign policy are very restricted. That authority is at its most potent in short-lived international crises, such as the 1962 Cuban missile crisis. But the object of international affairs is to avoid crises, not to seek international confrontations as compensation for a lack of power domestically.

The President's representatives can discuss mutual action with foreign governments, but they usually cannot commit the United States to endorse an agreement. The concurrence of Congress is almost invariably needed, whether in the form of legislation, appropriations, or tacit agreement not to use its considerable powers of oversight to obstruct or alter the implementation of a given policy. Of course, European officials often have to refer back to their national government for instructions about negotiations and the full force of Cabinet disagreement may be felt on an important matter, for example, the terms of an International Monetary Fund loan. But once a Cabinet has made up its mind, then a European government can quickly commit the country in international affairs. By contrast, in the United States most noncrisis decisions approved by the President do not commit the government until they have also been reviewed and acted upon by one or more sub-governments.[35]

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[33] Quoted by Theodore C. Sorensen, *Decision-Making in the White House* (New York: Columbia University Press, 1963), p. 42.

[34] See, for example, I. M. Destler, *Presidents, Bureaucrats and Foreign Policy* (Princeton: Princeton University Press, 1972); and Graham Allison and Peter Szanton, *Remaking Foreign Policy: the Organizational Connection* (New York: Basic Books, 1976).

[35] On the significant claims of Congress for involvement in foreign policy making

Presidential endorsement of a foreign policy initiative is not tantamount to the commitment of the United States government. For example, there can be no dispute about the national and international importance of SALT II (Strategic Arms Limitation Treaty). The inability of President Carter to obtain any binding decision about America's acceptance or rejection of the treaty months after its negotiation highlights the relative weakness of American government. The President initially found it easier to agree with America's major international adversary than with his own party in Congress. To argue that Congress was wiser than the President on this issue is to defend the American system in American terms. It is hardly an inducement to foreign nations to enter into commitments with a President, if Congress concludes that the President is not even worthy of trust within Washington!

The management of the economy today presents no easy answers —but there are nonetheless important decisions to be made. Moreover, decisions concerning the money supply, the level of public expenditure, America's relationship with its foreign trading partners, and national wage and price controls are collective issues. But the institutions for making economic policy in the United States are much more fragmented than in any Cabinet system. The very substantial revenue raising and spending powers of state and local governments compete with federal decision, and the greater scope of private-sector economic activity further reduces the scope for federal decision. Within the federal government, the President consults with at least three different major economic policy advisers—the Treasury, the Council of Economic Advisors and the Office of Management and Budget—as well as such agencies as Commerce, Labor, Agriculture, and Housing and Urban Development. The Federal Reserve Board stands at a greater distance from the executive branch than do most European central banks. The increasing severity and importance of America's economic problems have led Presidents to seek new means of managing the flow of economic recommendations coming to their attention, with mixed success.[36]

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today, see, for example, Thomas M. Franck and Edward Weisband, *Foreign Policy by Congress* (New York: Oxford University Press, 1979), and such journalistic comments as Martin Tolchin, "Congress Broadens Its Influence on Foreign Policy," *New York Times*, December 24, 1979.

[36] Cf. Roger Porter, "Presidential Decisionmaking: the Economic Policy Board" (Ph.D. diss., Harvard University, 1978, and forthcoming as a Cambridge University Press book); and Sidney L. Jones, *The Development of Economic Policy: Financial Institution Reform* (Ann Arbor: Graduate School of Business Administration, University of Michigan, 1980).

To complicate matters further, there is an increasing need for American economic policy to balance domestic with international concerns, for the American economy is now greatly influenced by what happens elsewhere in the world. The growing interdependence of international and domestic issues implies a need for collective authority to reconcile conflicts across an even wider range of concerns than heretofore. But a careful review by I. M. Destler of the direction of America's foreign economic policy concludes with a message that is "predominantly negative." The President is advised to treat international economic policies through domestic economic policy-making institutions, but these institutions are relatively weaker than the President's agencies for national security. Furthermore, the influence of congressionally based sub-governments is greater in economic policy than in international affairs.[37]

The specialization of economic policy institutions is not unique to the United States. When European governments nationalize major industries, they create very complex institutions; the case of Italy is an extreme example. The differentiation of economic institutions is part and parcel of the complexities of a mixed economy. What distinguishes governments on opposite sides of the Atlantic is the relative capacity to resolve differences. A European nation can refer economic issues to a Cabinet in which the Treasury will control far more of public-sector spending (and far more of the economy as well) than the President does, as well as having more collective authority in Cabinet.

The 1973 OPEC oil embargo has fundamentally altered the character of the energy issue. Prior to that date, there was no consensus that the United States needed to have a national energy policy. There were a plurality of energy policies, mostly made by a process of mutual adjustments in the marketplace. Individual consumers determined their use of energy by individual decisions. Producers and suppliers of energy used the profit motive to guide their actions. Political decisions affecting energy use were made at local and state as well as federal levels. The whole apparatus of sub-government politics persists to the present.

Political events of the 1970s, however, have made energy questions an issue of collective choice. Crucial questions today concern the total amount of energy that America should seek from domestic and foreign suppliers in a given year; how much in foreign exchange it can pay for energy supplies; and how the economy can adapt to abrupt changes in oil prices. Questions of collective supply and demand have supplanted issues of individual supply and demand. The questions concern government because of the scale of costs involved and because of the interdependence of energy, economic, and foreign policies.

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[37] See I. M. Destler, *Making Foreign Economic Policy* (Washington, D.C.: The Brookings Institution, 1980), chap. 13.

Energy policy is intrinsically complex and uncertain; there is no easy or assured course of action that the United States or any European government can follow. European governments are advantaged in responding to these complexities because of their greater collective authority in government. But in the United States, the President's ability to take any action on major energy issues is hamstrung by sub-government politics.

In the face of such major collective challenges, it is little wonder that James Reston described Washington as "a troubled city" as it entered the 1980s. Reston diagnosed the cause as "structural defects in our government that must be repaired if we are to deal with our present and coming problems."[38]

In international affairs, in the economy, and in energy, there is great scope for debate about the substance of collective decision. No institutional mechanism can guarantee that big decisions will always be made wisely or that their consequences will be widely acceptable. European governments differ in their ability to stimulate economic growth or control inflation, notwithstanding similarities in their institutions for economic policy making. Moreover, a Cabinet government usually consults pressure groups about major decisions. The important point here is that a Cabinet can make a binding decision. By contrast, in the United States, the need to secure the concurrence of many different sub-governments tends to deflect attention from the substantive merits or demerits of decisions and to concentrate attention upon tactics. In the Washington obstacle race, the crucial question is not only "how good is this policy?" but also "what sort of chance does it, or something that still looks like it after a host of amendments, have of enactment?"

The logic of the foregoing analysis points clearly to the need to strengthen government against already strong sub-governments. The next two sections elaborate on ways in which this strategy can be pursued. Unlike most prescriptive works, no claim is made that the President is (or can be) greatly strengthened. Being President is a one man job and the holder of that office is going to remain only one man—and something less than a superman. Instead, attention is given to ways in which the *collective* element of government can be strengthened by altering existing relationships between the President and other major political figures and by altering relations between the President and major policy makers nominally under his authority.

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[38] James Reston, "Where Are We Going?" *New York Times*, December 23, 1979.

These changes may appear to hamper the President by making him more subject to collective authority, but the opposite is the case. By comparison with European political leaders, an American President is weak because of the absence of collective authority. To strengthen collective authority would impose new restrictions upon the President, but unlike most post-Watergate changes, those considered here are intended to strengthen collective authority.

Better a government strong enough even to constrain the President than the present experience of both a weak President and a weak government. In Europe, taming the collective authority of government was once the first problem of the makers of constitutions. In America today, the issue of first importance is how to increase collective authority. The problems facing America in the 1980s provide justification enough for doing so. To make collective policies effectively, "We may need to give as much attention to reinventing the state and its institutions as to reinventing the car."[39]

## Disciplining Leaders

Ambition is the common element that unites politicians of diverse views on both sides of the Atlantic. To become a Prime Minister or a President, an individual must have a strong desire for office and a willingness to do whatever the system requires to reach the top. Europe and America differ, however, in what they demand of an ambitious politician. In Europe, the emphasis usually is upon skills relevant to running a government; in America, the first emphasis today is upon running a skillful election campaign.

The Cabinet system disciplines political leaders; their authority is not derived from followers attracted by their personality but from an organized party. The party is the organization that selects one of its members to be its leader. The party can continue without any particular personality as its leader, but a politician, whatever his personal attributes, cannot expect to give direction to government without the confidence of a political party.[40]

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[39] Bert A. Rockman, "Constants, Cycles, Trends and Persona in Presidential Governance: Carter's Troubles Reviewed" (Paper delivered to the annual meeting of the American Political Science Association, Washington, D.C., 1979), p. 48.

[40] Since the direct election of the President, the party politics of the Fifth French Republic constitute an exception in Europe in some respects resembling the American system of "partyless" candidates running personal campaigns, such as the use of the "run off" ballot in France.

The Cabinet system is based upon party discipline, for the Cabinet must be able to rely upon a majority in the Parliament to sustain its existence. No government can last without a party or coalition to deliver these votes. The weaker the party discipline (or the greater the divisions within a party) the more frequent are changes at the top, as the frequent reshuffling of coalition governments in Italy illustrates. Political parties do not need a distinctive left- or right-wing ideology to be a force giving direction to government. The parliamentary cohesion produced by party loyalty is enough; by sustaining a Cabinet in office, the party maintains the collective authority of government against sub-governments.

**Team Captain or Self-Employed?** In Europe, the party makes the Prime Minister. A European politician must serve a long apprenticeship in the party before being elected its leader. The route to the top is lengthy, commencing when an individual joins the party in a relatively humble status and at an early age. In Norway, the typical Labour Prime Minister spends a lifetime in the labour movement. In Britain, the average postwar Prime Minister has spent more than a quarter-century as a member of Parliament before entering Downing Street and joined the party as a youth, some forty years before reaching the top of politics. Decades spent working within the party give an individual politician a clear idea of what his colleagues think, how they act, and what they will expect and accept from their leader. Socialization is a process of disciplining individuals to act in accord with collective norms. Socialization into the party is a precondition of election to its leadership.

By contrast, American Presidents are self-selected and self-employed. Presidential candidates may spend years in building a political following, but it is first and foremost a *personal* following. In the case of the Kennedy brothers and Nelson Rockefeller, family ties and family wealth sustained a substantial staff and also created a national network of personally loyal supporters. Dwight D. Eisenhower, America's only two-term President since World War II, illustrates the weakness of American party loyalties. It was not known whether Eisenhower was a Republican or Democrat until shortly before he began to run for the Republican party's nomination for the Presidency.

To become a party standard-bearer, an American politician must first of all *divide* his party by contesting primaries against fellow partisans. Each contestant must build an organization outside the party, relying upon professional campaign consultants and individuals attracted by his personal appeal or issue stands. A Presidential convention is no longer the grand conclave of the state and local leaders of the party, but a candidate-centered electoral college whose members are recruited on grounds of candidate orientation, sex, race, age, or other criteria. In Austin Ranney's succinct phrase, it is best today to think of "parties as prizes, not judges."[41]

The winner of a Presidential election is in an even stronger position to maintain a personal party of followers. A President is likely to distrust the party's own National Committee staff, having an organization of personal loyalists whom he can discipline, but to whom he owes no obligations. An incumbent President must have a good personal political machine because of the threat of a major primary fight for renomination, as occurred in 1968, 1976, and 1980. He can use his media prominence to gain publicity and use White House staff for campaign as well as Presidential purposes. Congressmen cannot criticize a President for creating his own party, since individual congressmen are today increasingly inclined to create a personal following, independent of the party on whose ticket they run.

European countries trust the party caucuses to select their leaders, and thus to determine who can become Prime Minister. The method can hardly be described as undemocratic when it is used by parties of all ideologies, ranging from left to right (and also by conventions nominating every American President up to the 1970s). While the methods of caucus choice differ within Europe from party to party and country to country, there is a common negative factor: open competition for popular favor through primary elections is rejected.

To become party leader, a European politician must cultivate the good opinion of persons most involved in the party. The electoral college is small, but it is also unusually sophisticated for the people casting the votes have known all the candidates for years, or even a political lifetime. They will know their personal and political shortcomings, as well as their strengths and have seen how the candidates perform in adversity as well as in office. Thus, an aspiring party leader needs to show by actions as well as words that he has what it takes to give direction to government.

The European system of selecting leaders by party caucus strengthens party unity, and this in turn strengthens the collective authority of government against sub-governments. A party leader or Prime Minister is a team captain leading the team where it is willing to follow. A party leader knows what the party expects because he has spent years working in it, often in subordinate positions that chasten the ego. Insofar as European parties have some more or less distinctive principles, a party also offers guidance on policy. To retain office, a European party leader must maintain the continuing confidence of his political colleagues, some of whom will be looking for occasions to undermine that confidence to their personal benefit. The position of a European party leader is that of a politician subject to party discipline as well as using party discipline to sustain collective direction of government.

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[41] Austin Ranney, "The Political Parties: Reform and Decline," in *New American Political System*, ed. King, p. 236.

Both European and American parties face the common problem of winnowing a few national leaders from an electorate of tens of millions. The European reliance upon the caucus vests the power of choice in a jury of party peers. By contrast, the American primary system gives the mass electorate the power to name Presidential candidates. However, millions of primary voters cannot make the same kind of informed judgment about politicians as can party professionals. The scale of contemporary primary campaigning makes it impossible for candidates to be seen in the flesh by most voters, and the style of campaigning creates a greater concern with a candidate's image than with the substance of government policies.

In the United States today the mass media are the brokers or gatekeepers, mediating relations between candidates and voters. The evaluation of candidates by television and the press has replaced the endorsements formerly given by old-style party machines. An individual voter must rely upon the media to tell him what the candidates are like, in the absence of guidance offered by parties in face-to-face ward or township meetings. Candidates resent the potential influence of broadcasting mediators and seek to project their image to voters themselves with all the paraphernalia of modern telecommunications: television commercials, press advertisements, direct mailings, and canvassing by phone banks.

An American President is not a team player; he is more like a golfer who has just won the National Open by playing against and defeating everyone around him. Contemporary campaign conditions lead Presidential candidates to stress vacuous symbols that could be used interchangeably by candidates of either party, such as "strength" or "goodness" and to make the personality of the candidate the issue. In the words of Richard Nixon's chief media adviser in 1972: "We thought that the issue was clearly defined, that there were two choices —the President (and I meant that distinction—not Richard Nixon, but the President) and the challenger, the candidate George McGovern.

We wanted to keep the issue clearly defined that way."[42] A similar viewpoint was put forward by a senior aide to Jimmy Carter in 1976: "Issues are not our problem now—we've got to have good advance, good and precise targeting, good media, better polling, and a hell of a lot more on turn-out. We've got one major goal between now and November: to sell Jimmy and Mondale as leaders whom voters will trust. *They* are *the* issue."[43]

Rootless candidates risk becoming rootless in government. Insofar as a politician concentrates his attention upon the relatively contentless concerns of campaigning, distancing himself from any organization besides his own personal following, he loses a stable commitment of party to invoke against the sub-governments of Washington. Stephen Wayne succinctly draws the moral: "The personalization of the presidential electoral process has serious implications for governing. To put it simply, it makes it more difficult."[44]

European experience shows that it is not important whether a party elects its leader by a national conference of delegates or by a parliamentary caucus. Nor is it particularly important whether the leader is a strong personality (as is often the case in Britain or Germany), a servant of the party (as in Norway), or the leader of a temporarily dominant faction (as in Italy). The important point is that *there is a party there,* that is, an institution to recruit and socialize would-be national leaders, so that a leader can be selected who is well enough known to be trusted by the party and who can govern with collective support.

What is here called the European method of selecting party leaders was until very recently the American method as well. Until the 1960s, the standing of the President and of would-be challengers for that office was largely determined by the judgment of party professionals, congressmen, executive branch officials, and journalists. Since that time, presidential selection has become "in substance, if not in form, something closely approaching a non-party system."[45] It is a system in which critical judgments about the credibility and viability of candidates are made by professional media people who, whatever their skills in communication, remain amateurs in government.

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[42] Quoted in Stephen J. Wayne, *The Road to the White House* (New York: St. Martin's Press, 1980), p. 173.

[43] Quoted in Jeff Fishel, "From Campaign Promise to Presidential Performance: The Carter Administration in Contemporary Historical Perspective" (unpublished paper prepared for a colloquium of the Woodrow Wilson International Center, Washington, D.C., June 20, 1979), p. 40.

[44] Wayne, *Road to the White House,* p. 246. See also Nelson Polsby, "Presidential Cabinet Making: Lessons for the Political System," *Political Science Quarterly,* vol. 93, no. 1 (Spring 1978), pp. 15-25.

[45] Ranney, "Political Parties," p. 245.

Because these changes in American politics are both recent and volatile, it should be practicable to strengthen political parties, making them once again something more than mere flags of convenience. The opportunities to strengthen the parties are multiple and recurring—decisions about primary election laws, campaign finance, Presidential convention delegations, national party organizations, and procedures in Congress. To argue that parties cannot be raised from their present weak state or even that they are doomed to disappear is the counsel of despair. It would encourage a President to become a loner in a system of sub-governments in which few things can be accomplished by a politician on his own.

**Experienced Governors or Skilled Campaigners?** In any democratic system the ideal is identical: to give power to politicians who are successful both in winning office and in giving direction to government. The founders of party government in America believed that "running for office and governing the nation were (and ought consciously to be) indissolubly linked."[40] With the advent of mass suffrage in Europe, conservative as well as social democratic politicians came to realize that only a party with mass appeal could elect caucus nominees to office. But there is no logical necessity for all politicians to be equally skilled at campaigning or governing.

European party leaders vary widely in their native intelligence, political backgrounds, and programmatic goals. But the great majority have shared the common experience of an apprenticeship in governing. In the course of a long political career, an aspiring leader is likely to serve first as an assistant or deputy to a minister before becoming entrusted with directing a second-rank Cabinet department. Then, on the basis of demonstrated skills in office, the politician can be named to direct a major ministry—the treasury, foreign affairs, or an important welfare agency. In the course of a decade or more in office, a politician will become familiar with the routine of departmental briefings, Cabinet meetings, and Cabinet battles. It is by conducting himself well in these principal activities of government that an ambitious politician gains the stature needed to win election to its leadership.

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[40] James W. Ceaser, *Presidential Selection: Theory and Development* (Princeton: Princeton University Press, 1979). Cf. the less optimistic view of James Bryce, "Why Great Men are Not Chosen Presidents," in *The American Commonwealth*, 3d ed. (London: Macmillan, 1893), pp. 78-85.

Skill at campaigning is desirable but not essential to become a senior Cabinet minister. The proportional representation system of election used widely in Europe concentrates powers of parliamentary nomination in the hands of the party organization. A talented politician can find a safe parliamentary seat by work within the party. Once elected to Parliament, MPs usually find their seat is safe electorally, because of the strength of voters' party loyalties. Even where voters can cast a ballot for an individual candidate and not just for a predetermined party list, MPs find that the party label, not their personality, is the cause of their continuing reelection.

To become Prime Minister a politician does not need to win a national election. The post can be gained at short notice during the life of a Parliament, if the incumbent Prime Minister retires. In Britain, Winston Churchill, Anthony Eden, Harold Macmillan, Sir Alec Douglas-Home, and James Callaghan all entered 10 Downing Street after their party was already in power, and the last two never led their party to an election victory. A continental variant in reaching the top is to benefit from the reshuffle of a coalition government. When no party has a parliamentary majority, then the choice of a coalition Prime Minister depends upon negotiations between parties and not upon popular election. In Italy, the negotiations involve factions within the ruling Christian Democratic party as well as interparty bargaining.

Of course, every party must have a leader to head it during a general election campaign. In the selection of European party leaders, attention is increasingly being given to a potential leader's image, as well as to substantive evidence of capability in government. In many parties, a leader must be better than passable in his personal image to secure election. But the need to be better than passable in government is equally important, thus producing *doubly* qualified leaders. The short duration of a European election campaign, relative to American practice, greatly reduces the amount of attention that a party leader must give to electioneering.

Typically, an American Presidential candidate solicits popular support as an act of faith. His previous record is unlikely to cast much light on how the candidate would act if confronted with the mammoth challenge of the White House. Unlike a Prime Minister, a President almost invariably has no previous experience of directing a major federal agency. No postwar American President has previously headed an agency in the executive branch, thus learning about the direction of government at first hand.

So many accidents have marked the succession of postwar American Presidents that generalization from the record should be undertaken with caution. Nonetheless, one clear pattern is present. Five of the seven postwar Presidents have served in Congress and four have also served as vice president. Since only one of the four vice presidents subsequently entered the White House by popular election (and even then Richard Nixon did so only after being defeated in an attempt to move directly to the Oval Office from his subordinate post), it is reasonable to regard congressional experience as the most characteristic experience, and this has been true throughout American history.[47]

Congress provides all of its members with rich exposure to the sub-governments of the United States. The particular exposure given depends upon home-district interests and committee assignments. Given the greater powers of Congress, particularly in the oversight of executive agencies, a congressman may learn more about how agencies work than his counterpart in a Parliament in Europe. On the other hand, a congressman does not have to accept party discipline and is free to ignore the problems facing the President and can take popular positions on issues without any idea of what it means to be responsible for the policies at stake.[48] The great difference between congressmen and members of Parliament is that the latter do not jump from being a spectator to being the chief director of government.

The vice presidency is not so much a training ground for the Presidency as it is an antechamber in which an ambitious politician sits uncomfortably, wondering whether "lightning" will strike the President. The post gives its incumbent a broad overview of a number of problems of government, but the vice president is in no sense a deputy President. White House officials far below the vice president in formal status see much more of the President and his work. Nor does the President wish to give the vice president "on the job" training as his successor. Instead, he is likely to be jealous of very favorable attention that the vice president receives. The post is "too close for comfort," and the vice president is the one politician in the executive branch whom the President cannot dismiss at will. The President tends to use the vice president for select and limited purposes, to do things that the President would rather not do. Allison and Szanton conclude: "The consistent experience of all post-war Vice Presidents begins with high expectations based on Presidential promises of a major role rapidly followed by deep disappointment about being kept in the closet."[49]

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[47] Calculated from data presented in Thomas E. Cronin, *The State of the Presidency*, 2d ed. (Boston: Little, Brown & Co., 1980), p. [illegible].

[48] See, for example, David R. Mayhew, *Congress: The Electoral Connection* (New Haven: Yale University Press, 1974).

Historically, the governor's office was once a recruiting ground for the White House. More than half of all Presidents from Thomas Jefferson to Franklin D. Roosevelt had previously served in the executive mansion of a state. In the days when the federal government had little to do and its problems were domestic problems, the transition from State House to White House involved limited changes. Today, however, the transition is more complicated in two respects. The first is the difference in the types of issues on which Presidents and governors concentrate. A President is primarily concerned with collective problems—national security, foreign affairs, and the management of the economy and energy. By contrast, governors are concerned with such state and local issues as education and roads, services important to individual citizens but remote from the collective issues confronting the White House. Moreover, the growth in the complexity of Washington government and politics makes it much harder for a governor who has not had previous experience as a congressman or executive branch official to learn the ways of a town which is infinitely more complex in its politics than any state capital.

The postwar President with the greatest prior experience in executive branch politics was Dwight D. Eisenhower. As a career soldier, Eisenhower had ample opportunities to watch the bureaucracy at work and to develop skills for dealing with the huge defense establishment. It was Eisenhower's skill in working with the military bureaucracy and in interdepartmental and interallied relations, not battlefield performance, that brought him to the top of the defense establishment, thus giving him the visibility that led to the White House.

The American system of selecting a President is now biased against people who know how the executive branch works. It is hardly an accident that those who serve a President in a major department—State, Defense, or Treasury—do not subsequently become President themselves. A President will normally wish to keep the limelight to himself and take credit for major successes. Moreover, because the holders of major offices are closely identified with the President in public, they suffer in popular eyes from being tied to a President whose popularity is likely to wane after years in office.

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[49] Allison and Szanton, *Remaking Foreign Policy*, p. 83.

The extreme contrast between the prior government experience of a Prime Minister and the campaign demands upon a President raises the question: Is the government of the United States easier to understand than that of a European nation? Observers on both sides of the Atlantic would certainly say the opposite. Yet the President and most of those around him start their governing career in Washington with far less experience than their European counterparts of how government agencies work.

For a European political leader, the transition from dealing with particular issues of departmental politics to broad issues of government is gradual. The job of a Prime Minister is not to make, let alone manage, specific policies of government but to be concerned with meta-policy, that is, relationships between the particular policies of different ministries or sub-governments. Having had experience as a minister of how departmental policies are reconciled by the collective authority of the Cabinet makes it easier for a party leader to reconcile policies that collectively concern government.

By contrast, an American President enters office abruptly, with no prior experience of how the concerns of different sub-governments can or should be balanced against each other in the face of major collective concerns of government. A President with a congressional orientation may think the job of the White House is simply a problem in building coalitions of interests to enact legislation. But in fact it is very different. The President's primary responsibility today is to mobilize political forces to countervail against coalitions mobilized by sub-governments. Only if a President can do this is it possible to develop major policies in which the collective concerns of government take precedence against the particularistic claims of sub-governments.

Popular election confers legitimacy upon a President, but it does not confer wisdom about the ways of government. Of course, any politician skilled enough as a campaigner to be elected President can pick up some of the skills of governance on the job. But there is a risk in making this assumption, and the time spent in on-the-job learning may be costly for the President, for the country, or both. Moreover, the "hazards" of transition[50] have increased as political atomization tends to increase the number and potency of sub-governments, thus making it more difficult for an inexperienced and newly installed President to assert the collective authority of government.

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[50] See Neustadt, *Presidential Power*, chap. 11.

GOVERNMENT AGAINST SUB-GOVERNMENTS

The logic of the foregoing analysis points to a simple, almost self-evident proposition: *government is best strengthened by those who understand how it works.* Equally, the more ignorant a President is of the government over which he presides, the harder it will be for him to direct it. The efforts of President Nixon and his staff to alter fundamentally what they perceived as a hostile executive branch bear witness to the difficulties of effective change without knowledge. An insider's account of these uninformed attempts to redirect government is aptly entitled *The Plot That Failed.*[51] The slight record of achievement of President Carter's much trumpeted reorganization program is also evidence of the difficulties that an outsider faces in trying to redirect American government. The fact that many people knowledgeable in Washington's ways do not want to alter their actions makes it even more important that those who desire change be the equal of their opponents in understanding government.

Insofar as prior experience in the federal government is an asset, then the American electorate has a remedy ready at hand. Although anyone may run for the Presidency, voters should regard with skepticism any candidate who lacks significant previous experience in Washington. All other things being equal (a necessary and sometimes crucial qualifying phrase), those influencing the choice of Presidential candidates—whether party stalwarts, media commentators, or voters in primaries—should look to talent already in Washington. Washington is a critical political audience, aware of both individual shortcomings and strengths. Moreover, there is an ample supply of candidates successful in Washington for each party to choose from. If this is not done, then the American people risk electing a President who learns about giving direction to government by making his first mistakes at the top.

**Introverted or Extroverted Leaders.** Introverted political leaders give first priority to what is going on within government. Extroverted political leaders give first priority to what is going on in the country. In principle, a President or Prime Minister should be knowledgeable both about the actions of government and about the mood of the country. But there is not world and time enough to attend to everything of political importance. The choice a politician makes reveals as much about a political system as it does about his own personality.

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[51] See Richard E. Nathan, *The Plot That Failed: Nixon and the Administrative Presidency* (New York: John Wiley & Sons, 1975). Cf. Frederic V. Malek, *Washington's Hidden Tragedy: the Failure to Make Government Work* (New York, Free Press, 1978).

The character of government in Europe makes politicians introverted. They are concerned first and foremost with the operations of government, and those who judge them are an elite of colleagues, opponents, and political commentators. In Cabinet, politicians judge each other by how well they handle their departmental affairs and how readily they secure Cabinet endorsement for their proposals. A Prime Minister is judged by how well he manages the Cabinet and by the overall direction he gives the work of government. Parliament judges ministers by their performance in debate against political opponents, a far more demanding test than that of public opinion polls. The party organization judges ministers less in terms of their personal popularity and more in terms of their performance on issues of significance in the party.

Of course, European politicians are also judged by the mass media and, once every four years or so, by the electorate. But these judgments are not a pervasive and persisting influence upon government. An election tends to be an interruption (or sometimes a termination) in the career of a government, not the chief or only event to concentrate upon. European election campaigns are much shorter than in the United States and the preparations for a campaign are far less demanding. If an election need not occur at a fixed date, it can be brief and called at short notice.

In contemporary Washington, the President is pressed to be extroverted, to look outward to the national electorate. There is an established and well argued case for saying that the President should regard popular communication—the so-called preaching and teaching functions of the Presidency—as primary responsibilities. The White House affords a "bully pulpit," as Theodore Roosevelt once said, to explain the country's problems to the people and to inspire the nation in the face of difficulties.[52]

The President is constantly pressed to turn his back on Washington in order to renew his popularity with those who elected him, even though an American President's fixed term of office gives him greater job security than most European Prime Ministers. What makes the American President unique is the need to run a permanent national popularity campaign as a condition of influencing the government. It is necessary for the President to appear popular in the nation in order to affect government, for a President's influence in Washington depends upon how others perceive the President's popular standing at the moment.

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[52] On the "preaching and teaching" functions of the Presidency, see Clinton Rossiter, *The American Presidency* (New York: Harcourt, Brace & World, 1960).

As long as the nomination of Presidential candidates (or the renomination of the President) was in the hands of political professionals, a President was judged primarily by what he did rather than by what he said. Periodic consultation with the electorate was considered necessary but not sufficient to give direction to government. The electorate was not expected to make any but the most general judgment about the collective performance of the competing parties for, as V. O. Key, Jr., emphasized, "The voice of the people consists mainly of the words 'yes' or 'no,' and at times one cannot be certain which word is being uttered."[53] Judgments on specific actions were made by political professionals in Washington and reinforced by the very self-interested judgments of local machine politicians. If the President met the standards of the professionals, he rose in their esteem; if not, then the President's status fell, and with it his influence. The picture of judgment by partisan colleagues that Richard Neustadt paints of Washington in the 1940s and 1950s is similar to that existing in Europe today.[54]

Today, Presidents tend to distance themselves from Washington, preferring the continuing judgment of public opinion polls to that of Washington professionals. The Nixon White House was pervaded with a spirit of continuous electioneering. Many of the campaign staff, brought in unprecedented numbers to the White House, had no background in the federal government and had little or no substantive knowledge of policies. Henry Kissinger's memoirs are replete with anecdotes about offensive behavior by brash advance men from the White House who sought to give orders to officials of sovereign states in order to extract better coverage on prime-time American television.[55] Following victory in the November 1972 election, President Nixon abandoned a plan to conduct an elaborate talent search for new appointees to his administration in order to make appointments that would strengthen his appeal to major voting groups.[56] It is not accidental that a majority of Presidential aides convicted as Watergate conspirators were brought to the White House because of their campaign expertise rather than their knowledge of government.

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[53] *Politics, Parties and Pressure Groups*, 5th ed. (New York: Thomas Y. Crowell, 1964), p. 544.

[54] Cf. the description of the British Prime Minister in chapter 1, with Neustadt's argument, especially well set out in "The Constraining of the Presidency: the Presidency after Watergate," *British Journal of Political Science*, vol. 4, no. 4 (October 1974), pp. 383-97, and presented diagramatically in Cronin, *State of the Presidency*, p. 130.

[55] Henry Kissinger, *The White House Years* (Boston: Little, Brown & Co., 1979).

[56] See Malek, *Washington's Hidden Tragedy*, pp. 78ff., 259-64.

President Carter won the 1976 Presidential nomination under a new primary system that greatly encourages candidates to concentrate campaign efforts upon voters at the grass roots, rather than upon professional politicians and opinion leaders. Upon entering the White House he was cautioned by his pollster, the youthful Pat Caddell, "Too many good people have been defeated because they sought to substitute substance for style."[57] President Carter has been particularly in need of political "plums" to sustain a personal following, for he had no particular party following even after winning his nomination. In making initial appointments to office, President Carter appears to have gone well beyond his predecessors in his desire to "reach out" to appoint people previously unidentified with government or for representativeness of race, sex, or ethnic origin. His July 1979 request to all senior appointees to submit their resignations in order to have a "born again" administration was a further sign that executive agency heads are seen more as *symbols* to the mass electorate than as effective executive agency heads.[58]

Moreover, the Carter Presidency has opened up the White House to special interest groups important in the President's campaign strategy by creating a quantity of special assistants to provide liaison with Hispanic Americans, blacks, the aged, women, Jews, Italians, and other ethnic groups. Earlier Presidents have, of course, made a point of keeping on good terms with leaders of major groups in American society. But they did not think it necessary (or desirable) to appoint to their staff individuals whose chief function was to press the cause of particular interest groups within the White House Office.

In a revealing statement made in Detroit on July 16, 1979, after a "crisis of confidence" retreat into the mountains of Maryland, President Carter appeared to draw a stark contrast between his responsibilities in government and his responsibilities to the nation's electorate. He confessed:

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[57] As quoted by James T. Wotton, "Pre-Inaugural Memo Urged Carter to Emphasize Style over Substance," *New York Times*, May 4, 1977.

[58] For a detailed review of the appointments process in the 1976-1977 transition, see Bruce Adams and Kathryn Kavanagh-Baran, *Promise and Performance: Carter Builds a New Administration* (Lexington, Mass.: Lexington Books, 1979). On the Johnson years, compare Matthew B. Coffey, "A Death in the White House: the Short Life of the New Patronage," *Public Administrative Review*, vol. 34, no. 5 (September/October 1974), pp. 440-44. For an interpretation of the significance, see, for example, the ongoing work by Nelson Polsby, "The American Party System and the Conduct of the Presidency" (Paper delivered to a conference of the White Burkett Miller Center, University of Virginia, Charlottesville, November 1979).

> Many of the people have said, "Mr. President, you're not out among the people enough, you don't listen to us enough. You've been so bogged down managing the government that you haven't been leading our nation." Well, I listened to that and I've learned my lesson. So, for the rest of the time I'm in office, I'm going to spend more time among you.[59]

In other words, the President promised to give priority to the pastoral and inspirational task of spending time among people as against spending time in giving direction to government. No European Prime Minister would make that choice. They see their job as that of governing, not quasi-spiritual counseling.

An extrovert President risks confusing appearance with reality. Even with the most elaborate of mass media or metaphysical efforts, a President cannot make his presence felt nearly so much outside Washington as inside the capital. There he occupies a unique office. Outside, he is but one more source of inspiration or guidance, and a partisan source at that. To attempt to be the leader of "all the people" *except* the two million staff of the federal government is a curious way to assert political leadership. To try to claim the popularity usually accorded only a monarchical Head of State is to misunderstand the reason why Europe's surviving monarchs have remained popular. Monarchs have maintained popular esteem only by acting apolitically and avoiding controversy.[60]

There is nothing wrong with a President seeking publicity from the Oval Office as long as this can be done at little or no cost to his powers of governance. But a President urged to "look" Presidential by signing legislation in the White House Rose Garden may become more concerned with appearances than with influencing what he signs. Nor is there anything wrong in asking of a proposed measure: How will this play in Peoria? Yet if the President is to have influence on government, he must also subject each of his actions to another test: *How is this playing in Washington?* Otherwise, in the words of Bert Rockman, a President risks becoming "a public relations junky."[61]

The growth of modern publicity techniques and the international decline of deference to leaders has affected Prime Ministers as well as Presidents. But the need for Prime Ministers to look to public opinion is occasional and intermittent. Their first priority remains exercising authority within government. Even when a Prime Minister such as Harold Wilson gives first priority to public relations, he does so as an agent for his party, and not simply as a self-employed promoter. If a Cabinet makes a mess of things, then all the clever speeches and quiet chats with media people will be of little avail to a Prime Minister who rises and falls with the performance of his party in government.

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[59] *Weekly Compilation of Presidential Documents* (July 23, 1979), p. 1257. In his speeches at this time, President Carter also indicated a desire to flee from the Washington news media as well, stating a preference for media people "uncontaminated" by contact with the judgmental standards of Washington.

[60] Cf. Richard Rose and Dennis Kavanagh, "The Monarchy in Contemporary Political Culture," *Comparative Politics*, vol. 8, no. 3 (April 1976), pp. 548-76.

[61] Rockman, "Constants, Cycles," p. 46.

To communicate effectively requires deeds as well as words. The substance of government has more effect upon the lives of ordinary people than does the style of national leaders, and television offers more appealing entertainment than do late-middle-age politicians. In the short run, a President may find that he does well in the polls because even though "his policies may be wrong, his politics have been brilliant."[62] But in the long run, it is what government does that has an enduring impact upon society.

If a President reduces, or even flees from his responsibilities in government, there is no doubt that America can still be governed. But in default of collective political authority, it will be government only by sub-governments.

## You've Got To Trust Somebody

Since time immemorial, kings, priests, and warrior chiefs have faced the challenge of how to extend their power beyond face-to-face discussions or hand-to-hand combat. The authors of the American Constitution thought they had resolved the difficulty by creating a Presidency that Thomas Jefferson praised for providing "unity of action and direction" in all the branches of government.[63] The Constitution vested executive authority in the President. It did so clearly and succinctly. It gives no indication, however, of how one person should conduct the affairs of the United States government, and many occupants to the office have puzzled about what to do. By contrast, European countries vest executive authority in a Cabinet collectively responsible to Parliament.

The idea of one person constituting, let alone directing the whole of the executive branch of American government is not difficult: it is merely impossible. The executive branch is not a unitary organization, capable of direction from a single place. It is a vast congeries of disparate institutions. No one could be in charge of all the departments, agencies, bureaus, and commissions listed in the 717 pages of the *United States Government Manual, 1979–1980.* Even more than the checks of the Constitution, the constraints of the clock are the ultimate limit upon the personal power of a President. The finiteness of time limits what any President can do in the course of a day, a week, or a year.

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[62] James Reston, "Carter's Successful Failures," *New York Times*, February 6, 1980.

[63] Quoted approvingly by Louis A. Brownlow, "The Executive Office of the President: a General View," *Public Administration Review*, vol. 1, no. 2 (Winter 1941), p. 103.

The record of any leader's time in office is, for the most part, a record of what others do in his name. By himself, a President or a Prime Minister can do very little. European governments recognize this. A Prime Minister is referred to as a nondepartmental minister, that is, a politician who does *not* have any particular executive responsibilities. These are in the hands of particular departmental ministers. Detachment from day-to-day executive responsibilities gives a Prime Minister time to think about broad questions of governmental direction. It also makes the Prime Minister institutionally neutral in the inevitable conflicts between ministers representing different sub-governments. A President is nominally the chief executive officer for the whole federal government. In fact, a President must make use of others to extend his influence upon government. The more use a President can make of others, the better he can give direction to government.

Political relationships are based upon trust or distrust. Any national leader—whether President, Prime Minister, or Emperor—must make some assumptions about how those around him will behave. This is necessary to make life predictable. A political leader must decide whether to trust others to cooperate with him, either because their self-interest coincides with his self-interest or because of shared loyalties. The more people a political leader can trust, the better he can multiply his influence upon the government. To build a critical mass capable of making a major impact upon the direction of government, a politician must extend trust beyond the limits of face-to-face contacts and call upon the loyalties of hundreds of people whose positive cooperation is necessary in the direction of government.

Government without trust is a jungle in which unmitigated self-interest rules. A politician who does not trust anyone else risks becoming alienated from those who should be his political colleagues and allies. Isolation from others is a sign of political weakness. In its extreme form, distrust can produce paranoia, in which a politician alternates between delusions of persecution and delusions of grandeur. Anyone who doubts that distrust can be carried to extreme lengths in politics should read President Nixon's conversations on the Watergate tapes and study the attempts of the Nixon White House to take over the executive branch.[64]

Personal loyalty is a political leader's typical criterion for deciding whom to trust. One approach to human nature, an approach canvassed by political theorists since the time of Machiavelli, stresses the importance of self-interest as the best guarantor of loyalty.[65] A political leader may expect people to be loyal to him only when it is in their self-interest to do so. A President is often advised to be distrustful, for not even those he appoints may remain loyal to him. Instead, they may cultivate favor with others who influence their political fortunes or claim Presidential authority unduly and go into business for themselves.

Impersonal loyalty offers another basis for sharing authority. Impersonal loyalty exists when individuals show loyalty to something more than self-interest: to the ethic of a profession, be it the military, civil service, or the law; to the ideology or associations of a political party; or to the formal and informal responsibilities of an office. Impersonal loyalty makes collective action much easier because it encourages cooperation in the direction of government. Elected politicians may then trust civil servants to do what is expected of them. Impersonal loyalty also makes for a greater degree of cooperation, or at least civility, between politicians representing different views within government.

Ultimately, the question facing any President or Prime Minister is not whether to delegate responsibilities, but how? The pile of papers in the In basket would bury a national leader in a week, if he did not learn to trust others to deal with many major issues. The greater the number of memorandums, the greater the confusion of conflicting views that must be confronted and the more intense the claims made by interested parties and sub-governments. On both sides of the Atlantic, the question is the same: *Whom should you trust?* The answers, however, are different on opposite sides of the Atlantic.

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[64] Nathan, *The Plot That Failed*, passim; and *The White House Transcripts* (New York: Bantam Books, reprint of Watergate tapes, edited by the *New York Times*, 1974).

[65] For an interesting attempt to compare Machiavelli's approach to the role of the Florentine prince with Richard Neustadt's approach to the Presidency, see William T. Bluhm, *Theories of the Political System* (Englewood Cliffs, N.J.: Prentice-Hall, 1965), chap. 7.

**Collegial Trust.** Cabinet government fosters trust. It does this by requiring that self-interested politicians give loyalty to something larger than their own careers. First of all, Cabinet members must be loyal to the party that creates and sustains the Cabinet. It is the party, not the individual who is in power. A minister (including a Prime Minister) who loses the confidence of the governing party loses his office as well. Second, Cabinet members are expected to be loyal to the Cabinet collectively. Ministers are expected to accept decisions that go against their wishes when the Cabinet reconciles conflicting claims of sub-governments. Even self-interest will lead a politician to show impersonal loyalty as a necessary condition of personal advancement in a career in Cabinet government.

Cabinet government accepts the division of political labor. A Cabinet institutionalizes the articulation of conflicting political demands by different ministries, and the ambitions of individual ministers amplify the voices of sub-governments. But a Cabinet also maintains the collective authority of government. As part of the process of making policy, individual ministers are expected to show loyalty to whatever decision is collectively endorsed in the name of the whole.

Cabinet government is collegial. A college is a group of people bound together in a common fate, like a group of monks in a monastery or the faculty of a liberal arts college. The members of a college are not expected to have identical interests. They may be divided by subject matter in a teaching institution, by territory in an ecclesiastical body, or by departments in government. Nor are they all necessarily equal in status or authority; for example, the Roman College of Cardinals elects a Pope in whom supreme authority is then vested. The important point about a collegial body is that it creates a strong sense of solidarity between members who share a common political fate.

Collegial government does not deny self-interest, but disciplines it. A Prime Minister expects his colleagues to disagree with each other and perhaps to covet his job. The party's next leader and quite possibly the country's next Prime Minister, will sit in Cabinet as a colleague. Just as an American President brings politicians of diverse outlooks into his Cabinet, so too a European Prime Minister regards the making of a Cabinet as an exercise in building a political coalition, in which the different parts balance each other to mutual advantage.

In effect, a Cabinet is a team, rather than a collection of politicians brought together for an all-star game. Each minister wishes to think of himself as already or potentially the team's most valuable player. But a collective interest in the team's victory makes each individual prepared to cooperate with teammates; politics and government are combined in ways that are good for the country and good for the governing party's own electoral prospects.

A Prime Minister can act either as a playing captain or as a coach. A playing captain is in the thick of political action and is expected to justify his position by superior individual performance. But even a playing captain knows that he cannot score all a team's goals. The team as a whole must score more goals than any one member can do. Moreover, every player knows that the total number of goals that a team will score depends upon cooperation between players, including the readiness of one to pass the ball to a teammate who has a better chance of scoring. A Prime Minister may often act like a coach on the sidelines, a vantage point that saves him from getting his shins kicked. It also avoids potentially awkward comparisons between the performance of individual departmental ministers and the Prime Minister. A coach cannot call all the plays or score all the goals, but he is held responsible for the collective performance of the team. Whether a Prime Minister acts as a playing captain or coach, he accepts the discipline of loyalty to a collective political fate.

The sources of collegial loyalty are multiple and vary somewhat from country to country. In Britain, years of living with colleagues in party and Parliament give each Cabinet member a good idea of the ways in which colleagues can be trusted. In Germany, a tradition of legalistic thinking makes formal departmental powers and institutions of greater importance in regulating relationships between colleagues. In Norway, a lifetime of continuing involvement in the Labour movement makes colleagues into friends or at least, old and familiar antagonists. In Canada, the Cabinet has shown an increasing readiness to trust small committees of ministers to make many decisions in the name of the Cabinet as a whole. In Italy, the very weakness of trust and loyalty makes even more important the retention of that minimum collective loyalty that is a precondition of any Christian Democratic politician enjoying the benefits of Cabinet office. The history of Franco Spain shows what can happen when there is not a political structure based upon loyalty and trust: sub-governments became strong as personalistic loyalties to Franco weakened through time. In the Fifth French Republic, the directly elected President has used a Prime Minister and Cabinet to ensure legislative support, while he also worked closely with a coterie of very senior civil servants.

The relationship between Cabinet colleagues is only half the story of political administration in a European government. Equally important is the relationship between ministers and the permanent civil service. The most immediate sign of their importance is the numerical superiority of the higher civil service. A party that has gained millions of votes at a general election may place only a few dozen people in major positions of authority within government: senior civil servants very greatly outnumber the ministers held accountable by the electorate. Experience is a second cause of the importance of civil servants; collectively, they are the institutional memory in government. Civil servants attain high-ranking positions by demonstrating skills in managing the machinery of government. Because they serve many governments, officials acquire a fund of knowledge far beyond that of a politician, whose tenure of office is normally short-lived. In a very real sense, senior civil servants are the mainstay of government. At the highest levels, senior civil servants are very different from rule-bound clerks. They are very political animals, albeit of a different species than ministers.

Impersonal loyalty is the central value of a civil servant. Civil servants see themselves as loyal not only to the party in power, but also to the institutions of government that continue whatever party the electorate returns to office. The loyalty is to the concept of "the state," "the Crown," or "the Constitution." It is thus public and political, but is also far broader than that of a party politician; it requires a civil servant to distance himself from identification with individual politicians. The ethic is most familiar in the military.

Just as ministers may pride themselves on party loyalty, so civil servants pride themselves on their political pliability, that is, a readiness to serve ministers of different parties. Even if personally disagreeing with a particular policy, a civil servant should, as the saying in London's Whitehall puts it, "carry out ordained error with loyalty and even enthusiasm." Paradoxically, many continental civil servants would claim that the fact that national laws allow them to stand for elective office while a civil servant is proof of their professional capacity to distinguish between different political roles, sometimes showing impersonal loyalty to government and, at other times, acting as a party loyalist.[66]

The doctrine of impersonal loyalty is sustained in European governments by the civil service. As a distinct and honored status group within society, it recruits from the ablest university graduates and offers a permanent career. In the first few years of office a civil servant learns the ethic of impersonal loyalty and to suppress individual opinions in favor of views consistent with the impersonal values of the service. Because the higher civil service to a large extent regulates its own promotions, younger civil servants seek to demonstrate skill in serving impersonal ideals as a means of promotion to the higher ranks of their chosen career.

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[66] For surveys comparing the relations of European politicians and civil servants, see, for example, Mattei Dogan, *The Mandarins of Western Europe* (New York: Halsted Press, 1975).

Ministers usually develop a trusting relationship with civil servants, because their roles are complementary. Ministers are or ought to be skilled at voicing political demands and bargaining in Cabinet on behalf of their ministry. While a minister is concerned with the "external" relations of a ministry, senior civil servants can manage the direction of its continuing activities. At the highest levels, civil servants should also be expert in advising their minister about the conflicts that can arise between what a politician may desire and that which is administratively "do-able." By trusting civil service advisers, ministers expect to gain ideas and policies designed to anticipate major political criticisms and capable of implementation with a minimum of administrative difficulty. When a minister is under attack, he can turn to civil servants for ammunition to use in self-defense. In return, a civil servant trusts that the minister will take responsibility for everything the ministry does—including civil servants' mistakes. Civil servants do not mind letting their political superior take the credit—as long as he will also take the blame. What they value is security and anonymous influence.

Because civil servants have a long career in government, they are a force for continuity from election to election. This may lead some ministers newly returned to office to look at their advice with skepticism. A good civil servant will react by welcoming the stimulus of a new set of political masters. If a minister refuses to trust his civil servants, he is in difficulty. He will not know what to make of the mountains of information and advice sent to him. Nor will he have an alternative source of advice or a network of sub rosa contacts within the ministry. To implement policies without involving ministry staff is virtually impossible. Hence, a minister distrustful of his impersonal advisers can rarely give effective direction to government. Trust is a necessary condition of effective political action by a minister.

The reciprocal trust of ministers and civil servants tends to strengthen the collective voice of government against sub-governments. Just as ministers have a collective loyalty to their party and Cabinet, so civil servants have a collective loyalty to enduring institutions of government. Moreover, this loyalty is reinforced by their own career ladder. The result is that politicians in a Cabinet can normally assume when making decisions that the alternatives from which they choose have been formulated by civil servants with an eye to ready implementation and that an experienced and skilled career service is ready to carry out the choice that the Cabinet collectively makes.

**Institutionalized Distrust.** The President's position is unique, but he pays a price in distrust for his lonely eminence. In the absence of the solidarity of Cabinet government, a President's appointees are likely to identify with the agency in which they serve. In the absence of strong party loyalties, congressmen may identify with particular constituency or subcommittee interests. Given the strength of American sub-governments, a civil servant may put loyalty to his sub-government ahead of loyalty to government in the abstract. The President may conclude that he cannot trust anyone else in "his" administration to see problems from the perspective of the Oval Office.[67]

In such circumstances, the President tends to see loyalty as a chimera at worst and a one-way street at best. He would like those he appoints to be loyal to him, whether they serve in the White House or elsewhere in government. But even a cursory reading of the literature about the Presidency will remind him that even close Presidential aides, not to mention remote departmental officials, have a tendency to identify the President's interests with their own personal interests, and he cannot hope to have enough influence to prevent this happening frequently. In fear of being captured by subordinates invoking his authority for their goals, a President may refuse to trust those he appoints. Whereas a Prime Minister has no choice but to defend decisions made by other ministers, since he too is bound by collective responsibility, a President may limit the backing he gives to projects of others for fear of becoming a captive of a particular sub-government or adviser.

However great a President's distrust of others in government, he nonetheless must have *some* trust in others as a necessary condition of extending his influence in government. A President looks first to White House staff for loyalty. The people appointed to posts there ought to be loyal to the President, for their jobs depend on the President retaining office and on the staffers retaining the personal confidence of the President. White House staff are typically assigned functional rather than program responsibilities; they look after press relations, or congressional relations, or are involved on an ad hoc basis with issues of Presidential interest.

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[67] This prescription is part of the conventional wisdom of Presidential advice today and has been particularly stressed by Richard Neustadt. For an insider's account of how even honest staff may become deluded by their position, see George Reedy, *The Twilight of the Presidency* (New York: Mentor Books, 1970).

A President has no difficulty in finding staff personally loyal to him. In running for office, a President accumulates a substantial personal retinue and the most senior of his campaign aides tend to move into positions in the White House. An unintended consequence of recruiting campaign staff for White House posts is that it enhances the pressures there to run a continuing campaign rather than a government. Campaign staff typically have little or no previous experience in the intricacies of executive branch operations. The skills required to be an advance man, to write campaign speeches, or to organize state primary races are very different from those required to put together a budget or review complex disputes about energy policy. While a President can continue to trust campaign staff to look after the electorate, he is ill advised to rely upon them to look after many problems of government.

The biggest questions of loyalty and trust concern the hundreds of people whom the President appoints to take leading positions in federal agencies. In contrast with Europe, a President is not restricted to appointing congressmen to office as a Prime Minister may be restricted to appointing MPs as ministers. Potentially, the hundreds of Presidential appointees can greatly multiply the influence of the President. As Hugh Heclo asserts: "In affecting the everyday work of government, these hundreds of personal selections add up to a cumulative act of choice that may be at least as important as the electorate's single act of choice for President every four years."[68]

In making appointments a President employs a multiplicity of criteria: personal friendship, loyalty, and campaign contributions; representation of voting blocs and interest groups; previous evidence of management abilities or intellectual achievement outside Washington; or previous success in an administrative position within government. Often, the criteria are seen to be in conflict, as in the simple judgment of one Presidential personnel adviser that the task was to achieve "the marriage of two opposing objectives: quality appointments and political reward."[69] But there is no necessary conflict between these objectives: talented people can also be enthusiastic supporters of a President. The real difficulty in making appointments is that a President is unlikely to know (or to care) much about the second, third, and fourth echelon posts or the people who receive White House commissions to fill them.

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[68] Hugh Heclo, *A Government of Strangers* (Washington, D.C.: The Brookings Institution, 1977), p. 88, and see pp. 38 and 85 for Heclo's estimate of the numbers involved.

[69] Quoted in Adams and Kavanagh-Baran, *Promise and Performance*, p. 24.

A President wants immediate support from executive branch officials—as and when his business and theirs intersect. The Cabinet does not secure the closure of conflict, as in a European system of government. Presidential appointees in the agencies have divided loyalties. Although the President gives them their commission, the pressures that go with the job tend to give precedence to the political demands of sub-governments. These pressures come from Congress through its oversight of the agency; from the bureaucrats within the agency; from pressure groups that are clients of the agency; and from a host of other influences that loom far larger to a Presidential appointee than to the President himself.[70]

The irony (or tragedy) is that while a President may sacrifice competence to secure loyalty, he may not gain loyalty in return. After working in the White House for President Lyndon Johnson, Joseph Califano described the relationship between the President and Presidential appointees thus:

> From his window in the Oval Office, the President looks out on a jumble of irrationally organized departments and agencies. Politics teaches him about the inherently divided loyalties of Cabinet and agency heads who must testify before Congressional oversight and appropriations committees and live with cross-pressures from their peers, their constituencies and the bureaucracies they administer.[71]

Two years later Califano had the opportunity to view the Presidency from a different perspective, when appointed Secretary of Health, Education, and Welfare in 1977. He promptly acted in accord with his new position. After prolonged friction with the White House, the President decided he was not securing enough of Califano's divided loyalties and fired him in 1979.

Even though both Republican and Democratic Presidents endorse the idea of "Cabinet" government, it has failed in practice in Washington. By Thomas Cronin's reckoning, less than one-quarter of the officials in a President's Cabinet are likely to be both loyal and expert. Those who are both disloyal and amateurish can easily be fired. Those who are loyal but inexpert cannot easily be dismissed. And those who are disloyal but capable politicians must be handled with care; if fired, this is best done at a moment of their temporary vulnerability. No wonder a White House aide lamented, "Everybody believes in democracy until he gets to the White House and then you begin to believe in dictatorship."[72]

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[70] See Bradley H. Patterson, Jr., *The President's Cabinet* (Washington, D.C.: American Society for Public Administration, 1976), chaps. 2 and 3.

[71] Quoted by Bradley H. Patterson, Jr., in "White House Staff: the Bashful Bureaucracy" (Unpublished paper, Washington, D.C., c.1977), p. 4.

The President's distrust of his own appointees is compounded by an increasing tendency to distrust the highest-ranking civil servants. The distrust was initially fostered by the Eisenhower administration's suspicion that career officials administering many agencies spawned by New Deal and Fair Deal legislation were of "a distinctly Democratic cast." In the words of one of them, "The line between the career service and the political appointees was a blurred one and relationships were close and trusting, based on the assumption—and for the most part, the fact—of a shared political philosophy."[73] The Eisenhower administration sought to induce change in the career grades by forcing out individuals closely identified with some New Deal programs and bringing in new appointees sympathetic to the Republican outlook. This could be done in two ways: giving civil service status to partisan recruits and increasing the number of Presidential appointees at the top of agencies.

With changes of party in 1960, 1968, and 1976, the number of political appointees has grown, and the layers of Presidential appointees at the top of agencies has more than doubled in two decades. A post held by a Presidential appointee is assumed to be a post "captured" from the bureaucrats and "won" for the President's will. Successive Presidents have increasingly devalued the expert knowledge of their own career budget staff in the Executive Office of the President, even though there is no one but the President to whom this staff could be loyal.[74] An extreme example is in the change in the direction of the Office of Management and Budget (formerly the Bureau of the Budget), a crucial agency in the Executive Office of the President. By 1980, the top ten staff were political appointees. Of the ten top OMB officials that President Carter initially appointed, nine were without any previous experience in the executive branch that they were meant to monitor on his behalf.

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[72] Quoted from a Kennedy aide by Cronin, *State of the Presidency*, p. 223; estimates of loyalty and competence of Cabinet ministers also from Cronin, p. 261.

[73] James L. Sundquist, "Jimmy Carter as Public Administrator: an Appraisal at Mid-Term," *Public Administration Review*, vol. 39, no. 1 (January/February 1979), p. 7; see also, Joel D. Aberbach and Bert A. Rockman, "Clashing Beliefs within the Executive Branch," *American Political Science Review*, vol. 70, no. 2 (June 1976), pp. 457-68; and Richard L. Cole and David A. Caputo, "Presidential Control of the Senior Civil Service: Assessing the Strategies of the Nixon Years," *American Political Science Review*, vol. 73, no. 2 (June 1979), pp. 399-413.

[74] Cf. Hugh Heclo, "OMB and the Presidency—the Problem of 'Neutral Competence'," *Public Interest*, no. 38 (Winter 1975), pp. 80-98. See also Louis Fisher, *Presidential Spending Power* (Princeton: Princeton University Press, 1975), chap. 2.

The 1976 election of a President without any previous Washington experience can be dismissed as the freak outcome of public reaction to a "mess" in Washington. But the readiness of the Carter administration to appoint inexperienced people to key positions (albeit modified by its readiness to appoint some old hands, too) is indicative of a longer-term trend.

The first consequence is the reduction in the collective memory of public officials. Newly appointed directors of agencies do not wish to ask about the past, for the past is a record of agency defeats as well as victories. Because they are determined to ignore the lessons from the past, each fresh flight of appointees runs the risk of rediscovering rather than learning from past mistakes.

A second consequence is the progressive "amateurization" of the central direction of government. Most Presidential appointees now have limited previous knowledge or no knowledge of Washington. It takes a year or two for a Presidential appointee to come to grips with the complexity of the institutions and programs under him. Yet most appointees only stay in a particular office for one or two years. By contrast, the European system of appointing ministers from within Parliament (or even, from the civil service) puts a premium upon prior knowledge of how government works. This greatly reduces the time needed to learn the specific operations of a department and most ministers are likely to remain in a given office longer than two years.

Estrangement is a third consequence of increasing the number of Presidential appointees at the top of an agency. Most agencies are staffed at the top by individuals appointed for a wide variety of political considerations, and who have not met before. There is no Presidential team. Instead, there is "a government of strangers," most of whom leave town or take another job before they become friends or working partners.[75] There is also estrangement between career civil servants and Presidential appointees. The former believe their chances for promotion are blocked unless they too become partisans. Some do, but others quit for better-paying jobs elsewhere in Washington; retreat into defensive positions that give them considerable autonomy; or collaborate with congressional subcommittees to direct particular programs as they, rather than the White House, think best.

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[75] See Heclo, *A Government of Strangers.*

Demoralization as well as distrust flourishes in such an environment. In the words of one former assistant secretary of the Treasury:

> The operating agencies and departments feel that White House aides unwisely isolate the President and influence his decisions without considering the technical advice that others have provided. White House assistants retort that Cabinet officials are immersed in operating details and become captives of institutional goals rather than concentrating on the needs of the President. Political appointees are placed in a no win situation: the career employees responsible for their programs resent pressures they believe are politically motivated and White House officers argue that the appointed officials should be better team players.[76]

**Directing Government as a Cooperative Task.** The President's title of chief executive is a misnomer; he can more accurately be described as a nonexecutive chief.[77] To visualize the President as in command of a hierarchical organization is misleading in the extreme. Insofar as a President is viewed as the man on top, this only emphasizes his remoteness from what is going on in the ranks of government. The powers of American government are divided among many institutions and individuals. The political questions of greatest importance to the President concern his nonhierarchical relationships with the rest of American government.

Governing is a cooperative task. Politicians in a Cabinet system recognize and welcome this. Each minister is given a measure of trust by his colleagues and allowed to proceed with matters of immediate concern within his department. In turn, each minister trusts his colleagues to meet common political responsibilities. When disputes arise between colleagues, each is expected to fight his case staunchly. But once the Cabinet resolves the dispute, they are expected to cooperate with each other. In the background, senior civil servants strengthen cooperation because their impersonal loyalty to the Cabinet reduces the animus that conflicts of personal loyalties can generate.

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[76] Jones, *Development of Economic Policy*, p. 284. The complaint is not unique to Jones's experience in the Nixon and Ford administrations. Cf. Robert Wood, "When Government Works," *Public Interest*, no. 18 (Winter 1970), p. 95.

[77] See Richard Rose, "The President: Chief but not an Executive," *Presidential Studies Quarterly*, vol. 7, no. 1 (Winter 1977). On the significance of "chieftainship" as a form of leadership, see Brian Farrell, *Chairman or Chief? The Role of the Taoiseach in Irish Government* (Dublin: Gill and Macmillan, 1971).

Prime Ministers accept without hesitation the self-restraints of cooperative government. It is part of the job description. A Prime Minister is not expected to become closely involved in formulating or carrying out policies for which particular ministers have operational responsibility. A Prime Minister expects to be consulted about the formulation of major policies, and expects Cabinet colleagues to cooperate when changes are suggested in departmental policies for the sake of broader considerations of government. Moreover, in hidden and not so hidden ways, the Prime Minister's hand can influence these policies. But he usually has neither the staff nor the inclination to distrust colleagues or to try to shadow, second-guess, or overrule their actions. By giving trust a Prime Minister secures sufficient detachment so that, when troubles arise, he is not primarily responsible; that dubious privilege is given to a Cabinet colleague.

Governing is a cooperative task in Washington as well. The reality of the Presidency is that in almost every field a President depends upon cooperation with others. Insofar as a Presidential proposal requires legislation or appropriations, Congress must cooperate if the President's wishes are to be made into government policy. Insofar as a government policy requires administrative action, public officials—often in state and local as well as the federal government—must cooperate if it is to be implemented. Insofar as implementation requires a positive response from citizens, the intended beneficiaries must also cooperate, whether business firms or unions encouraged to fight inflation, or people in poverty encouraged to better themselves. The President has far greater scope for independent action in international affairs, but American foreign policy depends upon the willing or unwilling cooperation of other nations to produce desired effects.

When enunciating policy proposals, a President gives guidance, not orders. The President is expected to indicate, from his unique perspective, what he thinks ought to be done in the name of the government of the United States. But he is also expected to take the views of other significant actors in the policy process into account. For this reason, a President may delay giving any indication of what he thinks the government should do until reasonably confident that Congress, executive branch agencies, and others in sub-government networks will cooperate with him. A President may also give guidance in very general, even intentionally vague, terms in order to avoid conflict, leaving others to give specific meaning to government policy.[78] A President may even employ "hidden hand" leadership as

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[78] See the extended discussion in Rose, *Managing Presidential Objectives*, pp. 155ff.

Eisenhower has been shown to have done, using others to promote controversial policies in order to remain out of the firing line himself.[79]

The President is exceptionally well placed for giving guidance on broad questions of public policy. Because his office is at the intersection of many conflicting sub-government demands, the President is well aware of how different domestic, economic, and international issues relate to each other. Because he ordinarily has no commitment to any departmental perspective, a President can view relationships among policies with a detachment denied departmental officials. Because the President has a unique political status, he can also command great publicity for any proposals he puts forward.

Important as the President is, he can only come to terms with the responsibilities of his office by trusting others. The government of the United States is not a single man, but a cooperative network of individuals and institutions. The 1960s and 1970s saw Presidents who rejected this belief, pursuing "efforts to govern without the government—a circumvention of the cabinet departments and the Congress that has deepened the isolation of the President, demoralized able bureaucracies and embittered executive-congressional relations." In the judgment of national security analysts Graham Allison and Peter Szanton, the consequence of this for major collective policies "is not simply inefficient, it is dangerous."[80]

To increase trust within the federal government requires reducing existing friction induced by distrust. Positive action requires the identification of people whom the President will trust to get on with their jobs as best they can. By doing this, the President can gain greater detachment from government and the practical political advantages that come from "not going to firefight every problem that comes along." It is often forgotten that strategies of inaction are important means of realizing the President's second priority: "keeping out of trouble."[81]

An immediate step that any President can take to reduce second-guessing of responsible agencies is to reduce the size of the White House staff. Because a President regards White House staff as personally loyal, his initial instinct is to trust them more than any other officials in government. But doing this has major disadvantages.

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[79] See Fred I. Greenstein, "Eisenhower as an Activist President: a Look at New Evidence," *Political Science Quarterly*, vol. 94, no. 4 (Winter 1979-1980), pp. 584ff. Cf. Allen Yarrell, "Eisenhower and McCarthy: an Appraisal of Presidential Strategy," *Presidential Studies Quarterly*, vol. 10, no. 1 (Winter 1980), pp. 90-98.

[80] Allison and Szanton, *Remaking Foreign Policy*, pp. x-xi.

[81] See Rose, "President: Chief but not an Executive," pp. 11ff.

There is a constitutional obstacle: a President cannot formally delegate his powers to staff subordinates. The Constitution does not make provision for multiple Presidents, nor does it authorize a building to make demands on executive agencies.[82] (Compare, for instance, the staffer's use of the phrase: "The White House wants . . .") Nor can White House staff normally claim to have knowledge of federal programs matching that of operating agencies. In such circumstances, a staff may simply broker deals with no knowledge of the content of policies or design policies with insufficient understanding.

Political prudence offers the most compelling argument against a large White House staff. The swelling of the Presidency increases the number of individuals purporting to speak in the name of the President, while reducing the proportion who can be in frequent enough contact to know which issues the President wishes to pursue or avoid. A President then finds that staffers give directions contrary to his wishes or involve the White House in needless controversy. Agencies find, in the words of a former Bureau of the Budget official, "There are too many people trying to bite you with the President's teeth."[83]

A second step that a President could take to strengthen government would be to make *fewer* Presidential appointments. This would reduce a burden that is now well beyond the powers of an incoming President. As John F. Kennedy said, when faced with the task of naming Cabinet and sub-Cabinet officers: "I don't know any people (for Cabinet jobs). I only know voters! How am I going to fill these 1,200 jobs?"[84] With fewer jobs to fill, the President could give more attention to selecting small and complementary teams of people to give direction to major agencies or programs. It would also reduce the errors that campaign staff make in arranging the appointment of people they do not know to jobs that they are unfamiliar with.[85] Cutting down the layers of untried Presidential appointees would reduce the amount of inexperience and unfamiliarity at the top of government. To overload agencies with novices is to weaken rather than strengthen the direction of government.

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[82] See the rules of President Ford's adviser, Donald Rumsfeld, quoted in Cronin, *The State of the Presidency*, p. 247.

[83] Roger Jones, quoted by Joel Havemann, "OMB's Legislative Role is Growing More Powerful and More Political," *National Journal*, vol. 5, no. 43 (October 27, 1973), p. 1592.

[84] Quoted in Arthur M. Schlesinger, Jr., *A Thousand Days* (Boston: Houghton Mifflin Co., 1966), p. 127.

[85] For an extreme example, see the account of the Carter administration's first-term efforts, in Adams and Kavanagh-Baran, *Promise and Performance*.

One positive measure that a President could take would be to give more appointments to people already experienced in the ways of government. Fortunately, the sources of experienced appointees are multiple. For more than a generation there has been a pool of "In-and-Outers," that is, individuals who are ready to accept short-term appointments in government, while at other times holding jobs outside government, and often outside Washington as well. In-and-Outers can be found in both Democratic and Republican ranks, and the frequent rotation of the parties in office increases the number of available personnel, that is, appointees turned out of office by the electorate.

In-and-Outers can also be complemented by the appointment of Super Grade civil servants (GS levels 16 to 18) to noncareer as well as career posts. Because they have served up to twenty years or more in government, there are few tricks of the political trade that Super Grades do not know. A President could show more trust in the impersonal loyalty of Super Grades, returning them to positions of authority and responsibility commensurate with those held prior to adding more layers of Presidential appointees in the past two decades. Alternatively, a President might offer more Presidential appointments in the noncareer service to Super Grades. A person accepting such a post becomes doubly qualified, having already demonstrated impersonal loyalty before accepting a public loyalty to the President of the day. Ironically, a President might find that placing greater reliance upon Super Grades would also ease his problems with Congress, for the views of American upper-level civil servants correlate very highly with those of congressmen.[86]

A President might also consider the advantages of appointing a few Cabinet secretaries with a "passion for visibility." Such secretaries could be used as buffers by the President to deflect political controversy from the White House. President Eisenhower was well aware of the advantages of trusting subordinates to make decisions. In phrases that almost exactly reverse President Truman's motto ("The buck stops here"), Ike believed that aides should be "free to solve their own problems wherever possible and not to get in the habit of passing the buck up."[87] Allowing select Cabinet secretaries to play a more public role in directing government would only recognize what is an accomplished fact. There is no need to imitate European-style Cabinet meetings when this has failed before. A newly elected President might instead encourage a few sophisticated secretaries to try out ideas—always with the warning that he retained the right to repudiate them or ask for their resignation, if they went beyond acceptable limits.

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[86] See Bert A. Rockman, "The Roles of Bureaucrats and Politicians: Styles and Prescriptions," typescript (University of Pittsburgh, 1979), figure 2.

[87] See Greenstein, "Eisenhower as an Activist President," p. 581. The memorandum quoted was written in wartime, but Eisenhower was consistent in trusting delegation thereafter as well.

Today, a President must accept the need for partnership in policy making. If major collective policies are to be made, they cannot be made by the President alone. The Vietnam war showed that there are even limits to the President's role as commander-in-chief

The most important partner for the President is outside the executive branch—Congress. Congress has always shown a major interest in initiating policies. The motto of congressmen is: "If you want to get along, you have got to go along." This motto applies to a President as well as to a freshman member of the House of Representatives. Only by voluntary cooperation between major parts can the American system produce collective authority sufficient to counteract sub-governments. To see the improvement of the nation's policy making simply in terms of strengthening the President is to mistake cause and effect. A President can be strengthened by measures that strengthen other institutions as well. To think otherwise is to mistake the part—the important but hardly exclusive prerogatives of the President—for the whole. In the face of major collective challenges and entrenched sub-governments, what is needed in America is not simply a stronger President. *What America needs most of all is a stronger government.*

## Cooperation and Competition

By comparison with the United States, European nations are better organized to make collective decisions, because there *is* a government there. The collegial system of government permits complex decisions to be sorted into constituent political parts, yet it also provides the authority needed for collective choice. Interestingly, European governments most nearly resemble Washington when they meet in the institutions of the European Community. The explanation is simple: the nine member nations of the European Community meet as sovereign states—even more sovereign than the committees of Congress or well-entrenched Washington bureau chiefs.[88]

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[88] See Helen Wallace, William Wallace, and Carole Webb, *Policy-Making in the European Communities* (New York: John Wiley & Sons, 1977).

The United States is at a competitive disadvantage in its relations with European countries because the strength of American sub-governments makes it difficult for a President to commit the nation's resources to the achievement of any policy. In addition to the difficulties presented by other nations, a President simultaneously faces the problem of dealing with Washington's sub-governments. When the United States had world political hegemony, it could be argued that it was an advantage for the nation not to be able to commit itself readily in foreign affairs. The threat of congressional intervention could be a strategic bargaining counter for extracting concessions from other nations—and the fact of congressional recalcitrance could lead to further concessions before approval of a treaty. But when America does not exercise world political hegemony, its inability to make policy commitments quickly and confidently makes the United States more vulnerable. European leaders are well aware of this. In the opinion of a veteran Washington columnist, James Reston, "It's hard to remember a time since the last World War when the ambassadors of the major nations in Washington were more anxious about the American economy or the handling of its foreign policy."[89]

The tempting thing for an American to do when confronted with evidence of national weakness and the possible advantages of other systems of government is to dismiss the whole question as "interesting but academic." America is as it is for reasons rooted in its national history, and European governments owe their present forms to past (and not always happy) political histories.

But no nation, not even one of the dimensions of the United States, can today act like an island unto itself. Whereas European countries have been doomed to live with the fact of interdependence for centuries, the shift from continental isolation to world involvement has occurred in America in a little more than a generation. Dollar devaluation in 1971 can be taken as the symbolic turning point, when decisions made by the large number of foreigners who held American dollars began to exert abrupt and unwanted influence upon Washington's direction of America's domestic economy. Decades of world dominance is not the best preparation for America facing interdependence in the 1980s. As the former British Prime Minister James Callaghan commented sympathetically after a visit to Washington early in 1980, "Americans don't know how to live with problems because they are always assuming that they can lick them."[80] In frustration, Americans may wish to retreat to isolationism, but this is hardly practicable in an era of nuclear missiles and global economic interdependence. An aggressive response to frustration is also of no avail. It is one thing to express a desire to "nuke" enemies. But it is impossible to use force against allies and friends.

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[89] "This Funny Capital," *New York Times*, March 19, 1980.

As the leader of a major political alliance, the United States today is continuously involved in cooperative actions with many nations affecting diplomatic and military affairs, the economy, and energy resources. While each country involved shares some common interests, each also has national interests to protect. In consequence, these relationships are also competitive. *Today, the United States finds itself competing against as well as cooperating with other major Western nations.*

In matters of military security, Western nations want to cooperate for mutual defense against potential aggressors. But the same allies also compete in trying to find ways to minimize their share of the collective defense burden. European politicians are no more anxious than American politicians to spend more on defense if this also requires a cut in spending on major social programs or a significant increase in taxation to meet increased bills for defense.

In the international economy, the United States cooperates with many nations by being an active trading partner. Insofar as the United States exports goods in large quantities to other countries, its economy becomes interdependent with that of its major trading partners. When the United States imports large quantities of goods from other countries, the skeins of interdependence tighten. The President's special representative for trade negotiations can define the major goals of United States trade policy, but he can achieve these goals only in cooperation with nearly one hundred other nations in complex multilateral trade negotiations.

In energy, Western nations have a common interest in not having abrupt changes in world oil prices that disturb standards of living and national security. But they are very differently endowed with energy resources. Of the eight nations studied in this volume, four have substantial oil resources of their own and four are almost entirely dependent upon imported oil. Differences in national resources lead nations to adopt competitive policies when each perceives its national interest to be more immediate and compelling than a general Western interest vis-à-vis the Middle East.

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[80] Henry Brandon, "Carter learns the power game," *Sunday Times* (London), January 13, 1980. For a fuller discussion of the varieties of North Atlantic relationships, see, for example, Christopher W. Makins, "The Atlantic Alliance," in *Setting National Priorities: Agenda for the 1980s*, ed. Pechman, pp. 459-96.

*The major collective problems facing America today involve international as well as national interdependence among security, economic, and energy policies.* Making policy now requires more than the creation of sufficient authority in government to resolve disputes between sub-governments within the United States. It also requires the marshalling of well-defined collective policies to assert vis-à-vis other nations. Insofar as national security matters are defined as the overriding policy concern in Washington, the President is likely to spend more time thinking about enemies than allies, a pattern of behavior that intensifies stress in Washington, as well as risking friction with friends elsewhere.

For nearly two decades after World War II, European countries were relatively weak vis-à-vis the United States. Decisions made in Washington could be "coordinated" with other nations after the event. But Washington today cannot devote all its attention to resolving domestic political disputes and worrying about unfriendly nations. To take the support of allies for granted is risky when international relations are increasingly competitive as well as interdependent.

To suggest that the President pay more attention to the opinions of friendly governments is not to suggest that the United States should refrain from thinking in terms of its own self-interest. Instead, it is to argue that the self-interest of the United States now requires it to pay more attention to what other nations do. This is because the policies of other European nations (and Japan should here be counted as a "European country) now have a clear and significant impact upon the success or failure of American politics.

In the 1980s America's *interdependence is likely to increase, in spite of the growth of neo-isolationist sentiments.* After all, wishing that international problems would disappear cannot reduce interdependencies based upon established economic, political, and security policies. The obstacles that sub-governments create in making collective policies in Washington affect America's capacity for international policy making. If nothing is done to alter this state of affairs, then the President may find that the government of the United States is a liability rather than an asset in efforts to advance America's national interests in an increasingly interdependent world.

## B. CONCERNING PROPOSALS TO ADOPT A CABINET FORM OF GOVERNMENT

## Proposed Constitutional amendment relative to Executive-Legislative Cooperation

### JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATIVE TO EXECUTIVE-LEGISLATIVE COOPERATION

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein)*, That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date of final passage of this joint resolution:

ARTICLE ——

SEC. 1. Congress shall have the power by law to designate offices in the Executive Branch, not to exceed 50 in number, to which Members of the Senate and the House of Representatives would be eligible for nomination and appointment, regardless of the time when the office was created or the emoluments whereof were increased, without being required to vacate their offices in the Senate or the House of Representatives.

SEC. 2. Immediately after the commencement of a Congress in a year during which the term of a President begins, and in the year commencing every two years thereafter, the President shall submit en bloc a list of the names of prospective nominees, whether Members or not, to the offices designated pursuant to Section 1 hereof, to the Senate and the House of Representatives. If each House separately by a majority of its respective Members present and voting, a quorum being present, concurs in such list en bloc, the President shall nominate and, by and with the advice and consent of the Senate, appoint those on such list to the designated offices. In the event of a failure of either House to give its concurrence, the President shall submit a revised list of names of prospective nominees until concurred in by the Senate and the House of Representatives.

SEC. 3. During the time that a Member of the Senate or the House or Representatives serves in the designated office, his compensation shall be at the rate provided by law for the said office. In the event such Senator or Representative ceases for any reason to serve in the designated office before the expiration of the term for which he was elected, his compensation shall be at the rate then provided by law for Senators and Representatives.

SEC. 4. The Congress shall have the power to enforce this article by appropriate legislation or rules of procedure, as relevant and proper.

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# CABINET GOVERNMENT IN THE UNITED STATES.

OUR patriotism seems of late to have been exchanging its wonted tone of confident hope for one of desponding solicitude. Anxiety about the future of our institutions seems to be daily becoming stronger in the minds of thoughtful Americans. A feeling of uneasiness is undoubtedly prevalent, sometimes taking the shape of a fear that grave, perhaps radical, defects in our mode of government are militating against our liberty and prosperity. A marked and alarming decline in statesmanship, a rule of levity and folly instead of wisdom and sober forethought in legislation, threaten to shake our trust not only in the men by whom our national policy is controlled, but also in the very principles upon which our Government rests. Both State and National legislatures are looked upon with nervous suspicion, and we hail an adjournment of Congress as a temporary immunity from danger. In casting about for the chief cause of the admitted evil, many persons have convinced themselves that it is to be found in the principle of universal suffrage. When Dr. Woolsey, in his admirable work on Political Science, speaks with despondency of the influence of this principle upon our political life, he simply gives clear expression to misgivings which he shares with a growing minority of his countrymen. We must, it is said, purge the constituencies of their ignorant elements, if we would have high-minded, able, worthy representatives. We see adventurers, who in times of revolution and confusion were suffered to climb to high and responsible places, still holding positions of trust; we perceive that our institutions, when once thrown out of gear, seem to possess no power of self-readjustment, — and we hasten to cast discredit upon that principle the establishment of which has been regarded as America's greatest claim to political honor, — the right of every man to a voice in the Government under which he lives. The existence of such sentiments is in itself an instructive fact. But while it is indisputably true that universal suffrage is a constant element of weakness, and exposes us to many dangers which we might otherwise escape, its operation does not suffice alone to explain existing evils. Those who make this the scapegoat of all our national grievances have made too superficial an analysis of the abuses about which they so loudly complain.

What is the real cause of this solicitude and doubt? It is, in our opinion, to be found in the absorption of all power by a legislature which is practically irresponsible for its acts. But even this would not necessarily be harmful, were it not for the addition of a despotic principle which it is my present purpose to consider.

At its highest development, *representative* government is that form which best enables a free people to govern themselves. The main object of a representative assembly, therefore, should be the discussion of public business. They should legislate as if in the presence of the whole country, because they come under the closest scrutiny and fullest criticism of all the representatives of the country speaking in open and free debate. Only in such an assembly, only in such an atmosphere of publicity, only by means of such a vast investigating machine, can the different sections of a great country learn each other's feelings and interests. It is not enough that the general course of legislation is known to all. Unless during its progress it is subjected to a thorough, even a tediously prolonged, process of public sifting, to the free comment of friend and foe alike, to the ordeal of battle among those upon whose vote its fate depends, an act of open legislation may have its real intent and scope completely concealed by its friends and undiscovered by its enemies, and it may be as fatally mischievous as the darkest measures of an oligarchy or a despot. Nothing can be more obvious than the fact that the very life of free, popular institutions is dependent upon their breathing the bracing air of thorough, exhaustive, and open discussions, or that select Congressional committees, whose proceedings must from their very nature be secret; are, as means of legislation, dangerous and unwholesome. Parliaments are forces for freedom; for "talk is persuasion, persuasion is force, the one force which can sway freemen to deeds such as those which have made England what she is," or our English stock what it is.

Congress is a deliberative body in which there is little real deliberation; a legislature which legislates with no real discussion of its business. Our Government is practically carried on by irresponsible committees. Too few Americans take the trouble to inform themselves as to the methods of Congressional management; and, as a consequence, not many have perceived that almost *absolute* power has fallen into the hands of men whose irresponsibility prevents the regulation of their conduct by the people from whom they derive their authority. The most important, most powerful man in the government of the United States in time of peace is the Speaker of the House of Representatives. Instead of being merely an executive officer, whose principal duties are those immediately connected with the administration of the rules of order, he is a potent party chief, the only chief of any real potency, — and must of necessity be so. He must be the strongest and shrewdest member of his party in the lower House; for almost all the real business of that House is transacted by committees whose members are his nominees. Unless the rules of the House be suspended by a special two-thirds vote, every bill introduced must be referred, without debate, to the proper Standing Committee, with whom rests the privilege of embodying it, or any part of it, in their reports, or of rejecting it altogether. The House very seldom takes any direct action upon any measures introduced by individual members; its votes and discussions are almost entirely confined to committee reports and committee dictation. The whole attitude of business depends upon forty-seven Standing Committees. Even the discussions upon their directive reports are merely nominal, — liberal forms, at most. Take, as an example of the workings of the system, the functions and privileges of the Committee of Ways and Means. To it is intrusted the financial policy of the country; its chairman is, in reality, our Chancellor of the Exchequer. With the aid of his colleagues he determines the course of legislation upon finance; in English political phrase, he draws up the *budget*. All the momentous questions connected with our finance are debated in the private sessions of this committee, and there only. For, when the budget is submitted to the House for its consideration, only a very limited time is allowed for its discussion; and, besides the member of the committee to whom its introduction is intrusted, no one is permitted to speak save those to whom he through courtesy yields the floor, and who must have made arrangements beforehand with the Speaker to be recognized. Where, then, is there room for thorough discussion, — for discussion of any kind? If carried, the provisions of the budget must be put into operation by the Secretary of the Treasury, who may be directly opposed to the principles which it embodies. If lost, no one save Congress itself is responsible for the consequent embarrassment into which the nation is brought,—and Congress as a body is not readily punishable.

It must at once be evident to every thinking man that a policy thus regulated cannot be other than vacillating, uncertain, devoid of plan or consistency. This is certainly a phase of representative government peculiar to ourselves. And yet its development was most natural and apparently necessary. It is hardly possible for a body of several hundred men, without official or authoritative leaders, to determine upon any line of action without interminable wrangling and delays injurious to the interests under their care. Left to their own resources, they would be as helpless as any other mass meeting. Without leaders having authority to guide their deliberations and give a definite direction to the movement of legislation; and, moreover, with none of that sense of responsibility which constantly rests upon those whose duty it is to work out to a successful issue the policies which they themselves originate, yet with full power to dictate policies which others must carry into execution,—a recognition of the need of some sort of leadership, and of a division of labor, led to the formation of these Standing Committees, to which are intrusted the shaping of the national policy in the several departments of administration, as well as the prerogatives of the initiative in legislation and leadership in debate. When theoretically viewed, this is an ingenious and apparently harmless device, but one which, in practice, subverts that most fundamental of all the principles of a free State,—the right of the people to a potential voice in their own government. Great measures of legislation are discussed and determined, not conspicuously in public session of the people's representatives, but in the unapproachable privacy of committee rooms.

But what less imperfect means of representative government can we find without stepping beyond the bounds of a true republicanism? Certainly none other than those which were rejected by the Constitutional Convention. When the Convention of 1787, upon the submission of the report of the Committee of Detail, came to consider the respective duties and privileges of the legislative and executive departments, and the relations which these two branches of the Government should sustain towards each other, many serious questions presented themselves for solution. One of the gravest of these was, whether or not the interests of the public service would be furthered by *allowing some of the higher officers of State to occupy seats in the legislature.* The propriety and practical advantage of such a course were obviously suggested by a similar arrangement under the British Constitution, to which our political fathers often and wisely looked for useful hints. But since the spheres of the several departments were in the end defined with all the clearness, strictness, and care possible to a written instrument, the opinion prevailed among the members of the Convention that it would be unadvisable to establish any such connection between the Executive and Congress. They thought, in their own fervor of patriotism and intensity of respect for written law, that paper barriers would prove sufficient to prevent the encroachments of any one department upon the prerogatives of any other; that these vaguely broad laws — or principles of law — would be capable of securing and maintaining the harmonious and mutually helpful co-operation of the several branches; that the exhibition of these general views of government would be adequate to the stupendous task of preventing the legislature from rising to the predominance of influence, which, nevertheless, constantly lay within its reach. But, in spite of constitutional barriers, the legislature has become the imperial power of the State, as it must of necessity become under every representative system; and experience of the consequences of a complete separation of the legislative and executive branches long since led that able and sagacious commentator upon the Constitution, Chief-Justice Story, to remark that, "if it would not have been safe to trust the heads of departments, as representatives, to the choice of the people, as their constituents, it would have been at least some gain to have allowed them seats, like territorial delegates, in the House of Representatives, where they might freely debate without a title to vote." In short, the framers of the Constitution, in endeavoring to act in accordance with the principle of Montesquieu's celebrated and unquestionably just political maxim, — that the legislative, executive, and judicial departments of a free State should be *separate*, — made their separation so complete as to amount to *isolation.* To the methods of representative government which have sprung from these provisions of the Constitution, by which the Convention thought so carefully to guard and limit the powers of the legislature, we must look for an explanation, in a large measure, of the evils over which we now find ourselves lamenting.

What, then, is Cabinet government? What is the change proposed? Simply to give to the heads of the Executive departments —

the members of the Cabinet — seats in Congress, with the privilege of the initiative in legislation and some part of the unbounded privileges now commanded by the Standing Committees. But the advocates of such a change — and they are now not a few — deceive themselves when they maintain that it would not necessarily involve the principle of ministerial responsibility, — that is, the resignation of the Cabinet upon the defeat of any important part of their plans. For, if Cabinet officers sit in Congress as official representatives of the Executive, this principle of responsibility must of necessity come sooner or later to be recognized. Experience would soon demonstrate the practical impossibility of their holding their seats, and continuing to represent the Administration, after they had found themselves unable to gain the consent of a majority to their policy. Their functions would be peculiar. They would constitute a link between the legislative and executive branches of the general Government, and, as representatives of the Executive, must hold the right of the initiative in legislation. Otherwise their position would be an anomalous one, indeed. There would be little danger and evident propriety in extending to them the first right of introducing measures relative to the administration of the several departments; and they could possess such a right without denying the fullest privileges to other members. But, whether granted this initiative or not, the head of each department would undoubtedly find it necessary to take a decided and open stand for or against every measure bearing upon the affairs of his department, by whomsoever introduced. No high-spirited man would long remain in an office in the business of which he was not permitted to pursue a policy which tallied with his own principles and convictions. If defeated by both Houses, he would naturally resign; and not many years would pass before resignation upon defeat would have become an established precedent, — and resignation upon defeat is the essence of responsible government. In arguing, therefore, for the admission of Cabinet officers into the legislature, we are logically brought to favor *responsible Cabinet government* in the United States.

But, to give to the President the right to choose whomsoever he pleases as his constitutional advisers, after having constituted Cabinet officers *ex officio* members of Congress, would be to empower him to appoint a limited number of representatives, and would thus be plainly at variance with republican principles. The highest order of responsible government could, then, be established in the United States only by laying upon the President the necessity of selecting his Cabinet from among the number of representatives already chosen by the people, or by the legislatures of the States.

Such a change in our legislative system would not be so radical as it might at first appear: it would certainly be very far from revolutionary. Under our present system we suffer all the inconveniences, are hampered by all that is defective in the machinery, of responsible government, without securing any of the many benefits which would follow upon its complete establishment. Cabinet officers are now appointed only with the consent of the Senate. Such powers as a Cabinet with responsible leadership must possess are now divided among the forty-seven Standing Committees, whose prerogatives of irresponsible leadership savor of despotism, because exercised for the most part within the secret precincts of a committee room, and not under the eyes of the whole House, and thus of the whole country. These committees, too, as has been said, rule without any of that freedom of public debate which is essential to the liberties of the people. Their measures are too often mere partisan measures, and are hurried through the forms of voting by a party majority whose interest it is that all serious opposition, all debate that might develop obstructive antagonism, should be suppressed. Under the conditions of Cabinet government, however, full and free debates are sure to take place. For what are these conditions? According as their policy stands or falls, the ministers themselves stand or fall; to the party which supports them each discussion involves a trial of strength with their opponents; upon it depends the amount of their success as a party: while to the opposition the triumph of ministerial plans means still further exclusion from office; their overthrow, accession to power. To each member of the assembly every debate offers an opportunity for placing himself, by able argument, in a position to command a place in any future Cabinet that may be formed from the ranks of his own party; each speech goes to the building up (or the tearing down) of his political fortunes. There is, therefore, an absolute certainty that every phase of every subject will be drawn carefully and vigorously, will be dwelt upon with minuteness, will be viewed from every possible standpoint. The legislative, holding full power of final decision, would find itself in immediate contact with the executive and its policy. Nor would there be room for factious government or factious opposition. Plainly, ministers must found their policies, an opposition must found its attacks, upon well-considered principles; for in this open sifting of debate, when every feature of every measure, even to the motives which prompted it, is the subject of out-spoken discussion and keen scrutiny, no chicanery, no party craft, no questionable principles can long hide themselves. Party trickery, legislative jobbery, are deprived of the very air they breathe, — the air of secrecy, of concealment. The public is still surprised whenever they find that dishonest legislation has been allowed to pass unchallenged. Why surprised? As things are, measures are determined in the interests of corporations, and the suffering people know almost nothing of them until their evil tendencies crop out in actual execution. Under lobby pressure from interested parties, they have been cunningly concocted in the close sessions of partisan committees, and, by the all-powerful aid of party machinery, have been hurried through the stages of legislation without debate; so that even Press correspondents are often as ignorant of the real nature of such special measures as the outside public. Any searching debate of such questions would at once have brought the public eye upon them, and how could they then have stood? Lifting the lid of concealment must have been the discovery to all concerned of their unsavory character. Light would have killed them.

We are thus again brought into the presence of the cardinal fact of this discussion, — that *debate* is the essential function of a popular representative body. In the severe, distinct, and sharp enunciation of underlying principles, the unsparing examination and telling criticism of opposite positions, the careful, painstaking unravelling of all the issues involved, which are incident to the free discussion of questions of public policy, we see the best, the only effective, means of educating public opinion. Can any one suppose for one moment that, in the late heated and confused discussions of the Bland silver bill, the Western papers would have had any color of justification in claiming that the Resumption Act of 1875 was passed secretly and without the knowledge of the people, if we had then had responsible government? Although this all-important matter was before the country for more than a year; was considered by two Congresses, recommended by more than one Congressional committee; was printed and circulated for the perusal of the people; was much spoken of, though little understood by the Press at the time, — the general mass of our population knew little or nothing about it, for it elicited almost no statesmanlike comment upon the floor of Congress, was exposed to none of the analysis of earnest debate. What, however, would have been its history under a well-ordered Cabinet government? It would have been introduced — if introduced at all — to the House by the Secretary of the Treasury as a part of the financial policy of the Administration, supported by the authority and sanction of the entire Cabinet. At once it would have been critically scanned by the leaders of the opposition; at each reading of the bill, and especially in Committee of the Whole, its weak points would have been mercilessly assailed, and its strong features urged in defence; attacks upon its principle by the opposition would have been met by an unequivocal avowal of "soft money" principles from the majority; and, defended by men anxious to win honors in support of the ministry, it would have been dissected by all those who were at issue with the financial doctrines of the majority, discussed and re-discussed until all its essential, all its accidental features, and all its remotest tendencies, had been dinned into the public ear, so that no man in the nation could have pretended ignorance of its meaning and object. The educational influence of such discussions is two-fold, and operates in two directions, — upon the members of the legislature themselves, and upon the people whom they represent. Thus do the merits of the two systems — Committee government and government by a responsible Cabinet — hinge upon this matter of a full and free discussion of all subjects of legislation; upon the principle stated by Mr. Bagehot, that "free government is self-government, — a government of the people by the people." It is perhaps safe to say, that the Government which secures the most thorough discussions of public interests, — whose administration most nearly conforms to the opinions of the governed, — is the freest and the best. And certainly, when judged by this principle, government by irresponsible Standing Committees can bear no comparison with government by means of a responsible ministry; for, as we have seen, — and as others besides Senator Hoar have shown, — its essential feature is a vicious suppression of debate.

Only a single glance is necessary to discover how utterly Committee government must fail to give effect to public opinion. In the first place, the exclusion of debate prevents the intelligent formation of opinion on the part of the nation at large; in the second place, public opinion, when once formed, finds it impossible to exercise any immediate control over the action of its representatives. There is no one in Congress to speak for the nation. Congress is a conglomeration of inharmonious elements; a collection of men representing each his neighborhood, each his local interest; an alarmingly large proportion of its legislation is "special;" all of it is at best only a limping compromise between the conflicting interests of the innumerable localities represented. There is no guiding or harmonizing power. Are the people in favor of a particular policy, — what means have they of forcing it upon the sovereign legislature at Washington? None but the most imperfect. If they return representatives who favor it (and this is the most they can do), these representatives being under no directing power will find a mutual agreement impracticable among so many, and will finally settle upon some policy which satisfies nobody, removes no difficulty, and makes little definite or valuable provision for the future. They must, indeed, be content with whatever measure the appropriate committee chances to introduce. Responsible ministries, on the other hand, form the policy of their parties; the strength of their party is at their command; the course of legislation turns upon the acceptance or rejection by the Houses of definite and consistent plans upon which they determine. In forming its judgment of their policy, the nation knows whereof it is judging; and, with biennial Congresses, it may soon decide whether any given policy shall stand or fall. The question would then no longer be, What representatives shall we choose to represent our chances in this haphazard game of legislation? but, What plans of national administration shall we sanction? Would not party programmes mean something then? Could they be constructed only to deceive and bewilder?

But, above and beyond all this, a responsible Cabinet constitutes a link between the executive and legislative departments of the Government which experience declares in the clearest tones to be absolutely necessary in a well-regulated, well-proportioned body politic. None can so well judge of the perfections or imperfections of a law as those who have to administer it. Look, for example, at the important matter of taxation. The only legitimate object of taxation is the support of Government; and who can so well determine the requisite revenue as those who conduct the Government? Who can so well choose feasible means of taxation, available sources of revenue, as those who have to meet the practical difficulties of tax-collection? And what surer guarantee against exorbitant estimates and unwise taxation, than the necessity of full explanation and defence before the whole House? The same principles, of course, apply to all legislation upon matters connected with any of the Executive departments.

Thus, then, not only can Cabinet ministers meet the needs of their departments more adequately and understandingly, and conduct their administration better than can irresponsible committees, but they are also less liable to misuse their powers. Responsible ministers must secure from the House and Senate an intelligent, thorough, and practical treatment of their affairs; must vindicate their principles in open battle on the floor of Congress. The public is thus enabled to exercise a direct scrutiny over the workings of the Executive departments, to keep all their operations under a constant stream of daylight. Ministers could do nothing under the shadow of darkness; committees do all in the dark. It can easily be seen how constantly ministers would be plied with questions about the conduct of public affairs, and how necessary it would be for them to satisfy their questioners if they did not wish to fall under suspicion, distrust, and obloquy.

But, while the people would thus be able to defend themselves through their representatives against malfeasance or inefficiency in the management of their business, the heads of the departments would also have every opportunity to defend their administration of the people's affairs against unjust censure or crippling legislation. Corruption in office would court concealment in vain; vicious trifling with the administration of public business by irresponsible persons would meet with a steady and effective check. The ground would be clear for a manly and candid defence of ministerial methods; wild schemes of legislation would meet with a cold repulse from ministerial authority. The salutary effect of such a change would most conspicuously appear in the increased effectiveness of our now crumbling civil, military, and naval services; for we should no longer be cursed with tardy, insufficient, and misapplied appropriations. The ministers of War, of the Navy, of the Interior, would be able to submit their estimates in person, and to procure speedy and regular appropriations; and half the abuses at present connected with appropriative legislation would necessarily disappear with the present committee system. Appropriations now, though often inadequate, are much oftener wasteful and fraudulent. Under responsible government, every appropriation asked by an Executive chief, as well as the reasons by which he backed his request, would be subjected to the same merciless sifting processes of debate as would characterize the consideration of other questions. Always having their responsible agents thus before them, the people would at once know how much they were spending, and for what it was spent.

When we come to speak of the probable influence of responsible Cabinet government upon the development of statesmanship and the renewal of the now perishing growth of statesmanlike qualities, we come upon a vital interest of the whole question. Will it bring with it worthy successors of Hamilton and Webster? Will it replace a leadership of trickery and cunning device by one of ability and moral strength? If it will not, why advocate it? If it will, how gladly and eagerly and imperatively ought we to demand it! The most despotic of Governments under the control of wise statesmen is preferable to the freest ruled by demagogues. Now, there are few more common, and perhaps few more reasonable, beliefs than that at all times, among the millions of population who constitute the body of this great nation, there is here and there to be found a man with all the genius, all the deep and strong patriotism, all the moral vigor, and all the ripeness of knowledge and variety of acquisition which gave power and lasting fame to the greater statesmen of our past history. We bewail and even wonder at the fact that these men do not find their way into public life, to claim power and leadership in the service of their country. We naturally ascribe their absence to the repugnance which superior minds must feel for the intrigues, the glaring publicity, and the air of unscrupulousness and even dishonesty which are the characteristics, or at least the environments, of political life. In our disappointment and vexation that they do not, even at the most distressing sacrifice of their personal convenience and peace, devote themselves to the study and practice of state-craft, we turn for comfort to re-read history's lesson,—that many countries find their greatest statesmen in times of extraordinary crisis or rapid transition and progress; the intervals of slow growth and uninteresting everyday administration of the government being noted only for the elevation of mediocrity, or at most of shrewd cunning, to high administrative places. We take cold consolation from the hope that times of peril—which sometimes seem close enough at hand—will not find us without strong leaders worthy of the most implicit confidence. Thus we are enabled to arrive at the comfortable and fear-quieting conclusion that it is from no fault of ours, certainly from no defects in our forms of government, that we are ruled by scheming, incompetent, political tradesmen, whose aims and ambitions are merely personal, instead of by broad-minded, masterful statesmen, whose sympathies and purposes are patriotic and national.

To supply the conditions of statesmanship is, we conclude, beyond our power; for the causes of its decline and the means necessary to its development are beyond our ken. Let us take a new departure. Let us, drawing light from every source within the range of our knowledge, make a little independent analysis of the conditions of statesmanship, with a view to ascertaining whether or not it is in reality true that we cannot contribute to its development, or even perchance give it a perennial growth among us. We learn from a critical survey of the past, that, so far as political affairs are concerned, great critical epochs are the man-making epochs of history, that revolutionary influences are man-making influences. And why? If this be the law, it must have some adequate reason underlying it; and we seem to find the reason a very plain and conspicuous one. Crises give birth and a new growth to statesmanship because they are peculiarly periods of action, in which talents find the widest and the freest scope. They are periods not only of action, but also of unusual opportunity for gaining leadership and a controlling and guiding influence. It is opportunity for transcendent influence, therefore, which calls into active public life a nation's greater minds, — minds which might otherwise remain absorbed in the smaller affairs of private life. And we thus come upon the principle, — a principle which will appear the more incontrovertible the more it is looked into and tested, — that governmental forms will call to the work of administration able minds and strong hearts constantly or infrequently, according as they do or do not afford them at all times an opportunity of gaining and retaining a commanding authority and an undisputed leadership in the nation's councils. Now it certainly needs no argument to prove that government by supreme committees, whose members are appointed at the caprice of an irresponsible party chief, by seniority, because of reputation gained in entirely different fields, or because of partisan shrewdness, is not favorable to a full and strong development of statesmanship. Certain it is that statesmanship has been steadily dying out in the United States since that stupendous crisis during which its government felt the first throbs of life. In the government of the United States there is no place found for the leadership of men of real ability. Why, then, complain that we have no leaders? The President can seldom make himself recognized as a leader; he is merely the executor of the sovereign legislative will; his Cabinet officers are little more than chief clerks, or superintendents, in the Executive departments, who advise the President as to matters in most of which he has no power of action independently of the concurrence of the Senate. The most ambitious representative can rise no higher than the chairmanship of the Committee of Ways and Means, or the Speakership of the House. The cardinal feature of Cabinet government, on the other hand, is responsible leadership, — the leadership and authority of a small body of men who have won the foremost places in their party by a display of administrative talents, by evidence of high ability upon the floor of Congress in the stormy play of debate. None but the ablest can become leaders and masters in this keen tournament in which arguments are the weapons, and the people the judges. Clearly defined, definitely directed policies arouse bold and concerted opposition; and leaders of oppositions become in time leaders of Cabinets. Such a recognized leadership it is that is necessary to the development of statesmanship under popular, republican institutions; for only such leadership can make politics seem worthy of cultivation to men of high mind and aim.

And if party success in Congress — the ruling body of the nation — depends upon power in debate, skill and prescience in policy, successful defence of or attacks upon ruling ministries, how ill can contending parties spare their men of ability from Congress! To keep men of the strongest mental and moral fibre in Congress would become a party necessity. Party triumph would then be a matter of might in debate, not of supremacy in subterfuge. The two great national parties — and upon the existence of two great parties, with clashings and mutual jealousies and watchings, depends the health of free political institutions — are dying for want of unifying and vitalizing principles. Without leaders, they are also without policies, without aims. With leaders there must be followers, there must be parties. And with leaders whose leadership was earned in an open war of principle against principle, by the triumph of one opinion over all opposing opinions, parties must from the necessities of the case have definite policies. Platforms, then, must mean something. Broken promises will then end in broken power. A Cabinet without a policy that is finding effect in progressive legislation is, in a country of frequent elections, inviting its own defeat. Or is there, on the other hand, a determined, aggressive opposition? Then the ministry have a right to ask them what they would do under similar circumstances, were the reins of government to fall to them. And if the opposition are then silent, they cannot reasonably expect the country to intrust the government to them. Witness the situation of the Liberal party in England during the late serious crisis in Eastern affairs. Not daring to propose any policy, — having indeed, because of the disintegration of the party, no policy to propose, — their numerical weakness became a moral weakness, and the nation's ear was turned away from them. Eight words contain the sum of the present degradation of our political parties: *No leaders, no principles; no principles, no parties.* Congressional leadership is divided infinitesimally; and with divided leadership there can be no great party units. Drill in debate, by giving scope to talents, invites talents; raises up a race of men habituated to the methods of public business, skilled parliamentary chiefs. And, more than this, it creates a much-to-be-desired class who early make attendance upon public affairs the business of their lives, devoting to the service of their country all their better years. Surely the management of a nation's business will, in a well-ordered society, be as properly a matter of life-long training as the conduct of private affairs.

These are but meagre and insufficient outlines of some of the results which would follow upon the establishment of responsible Cabinet government in the United States. Its establishment has not wanted more or less outspoken advocacy from others; nor, of course, have there been lacking those who are ready to urge real or imaginary objections against it, and proclaim it an exotic unfit to thrive in American soil. It has certainly, in common with all other political systems, grave difficulties and real evils connected with it. Difficulties and evils are inseparable from every human scheme of government; and, in making their choice, a people can do no more than adopt that form which affords the largest measure of real liberty, whose machinery is least imperfect, and which is most susceptible to the control of their sovereign will.

Few, however, have discovered the real defects of such a responsible government as that which I now advocate. It is said, for instance, that it would render the President a mere figure-head, with none of that stability of official tenure, or that traditional dignity, which are necessary to such figure-heads. Would the President's power be curtailed, then, if his Cabinet ministers simply took the place of the Standing Committees? Would it not rather be enlarged? He would then be in fact, and not merely in name, the head of the Government. Without the consent of the Senate, he now exercises no sovereign functions that would be taken from him by a responsible Cabinet.

The apparently necessary existence of a partisan Executive presents itself to many as a fatal objection to the establishment of the forms of responsible Cabinet government in this country. The President must continue to represent a political party, and must continue to be anxious to surround himself with Cabinet officers who shall always substantially agree with him on all political questions. It must be admitted that the introduction of the principle of ministerial responsibility might, on this account, become at times productive of mischief, unless the tenure of the presidential office were made more permanent than it now is. Whether or not the presidential term should, under such a change of conditions, be lengthened would be one of several practical questions which would attend the adoption of a system of this sort. But it must be remembered that such a state of things as now exists, when we find the Executive to be of one party and the majority in Congress to be of the opposite party, is the exception, by no means the rule. Moreover we must constantly keep before our minds the fact that the choice now lies between this responsible Cabinet government and the rule of irresponsible committees which actually exists. It is not hard to believe that most presidents would find no greater inconvenience, experience no greater unpleasantness, in being at the head of a Cabinet composed of political opponents than in presiding, as they must now occasionally do, over a Cabinet of political friends who are compelled to act in all matters of importance according to the dictation of Standing Committees which are ruled by the opposite party. In the former case, the President may, by the exercise of whatever personal influence he possesses, affect the action of the Cabinet, and, through them, the action of the Houses; in the latter he is absolutely helpless. Even now it might prove practically impossible for a President to gain from a hostile majority in the Senate a confirmation of his appointment of a strongly partisan Cabinet drawn from his own party. The President must now, moreover, acting through his Cabinet, simply do the bidding of the committees in directing the business of the departments. With a responsible Cabinet — even though that Cabinet were of the opposite party — he might, if a man of ability, exercise great power over the conduct of public affairs; if not a man of ability, but a *mere* partisan, he would in any case be impotent. From these considerations it would appear that government by Cabinet ministers who represent the majority in Congress is no more incompatible with a partisan Executive than is government by committees representing such a majority. Indeed, a partisan President might well prefer legislation through a hostile body at whose deliberations he might himself be present, and whose course he might influence, to legislation through hostile committees over whom he could have no manner of control, direct or indirect. And such conditions would be exceptional.

But the encroachment of the legislative upon the executive is deemed the capital evil of our Government in its later phases; and it is asked, Would not the power of Congress be still more dangerously enlarged, and these encroachments made easier and surer, by thus making its relations with the Executive closer? By no means. The several parts of a perfect mechanism must actually interlace and be in strong union in order mutually to support and check each other. Here again permanent, dictating committees are the only alternative. On the one hand, we have committees directing policies for whose miscarriage they are not responsible; on the other, we have a ministry asking for legislation for whose results they are responsible. In both cases there is full power and authority on the part of the legislature to determine all the main lines of administration: there is no more real control of Executive acts in the one case than in the other; but there is an all-important difference in the character of the agents employed. When carrying out measures thrust upon them by committees, administrative officers can throw off all sense of responsibility; and the committees are safe from punishment, safe even from censure, whatever the issue. But in administering laws which have passed under the influence of their own open advocacy, ministers must shoulder the responsibilities and face the consequences. We should not, then, be giving Congress powers or opportunities of encroachment which it does not now possess, but should, on the contrary, be holding its powers in constant and effective check by putting over it responsible leaders. A complete separation of the executive and legislative is not in accord with the true spirit of those essentially English institutions of which our Government is a characteristic offshoot. The Executive is in constant need of legislative co-operation; the legislative must be aided by an Executive who is in a position intelligently and vigorously to execute its acts. There must needs be, therefore, as a binding link between them, some body which has no power to coerce the one and is interested in maintaining the independent effectiveness of the other. Such a link is the responsible Cabinet.

Again, it is objected that we should be cursed with that instability of government which results from a rapid succession of ministries, a frequent shifting of power from the hands of one party to the hands of another. This is not necessarily more likely to occur under the system of responsibility than now. We should be less exposed to such fluctuations of power than is the English government. The elective system which regulates the choice of United States Senators prevents more than one third of the seats becoming vacant at once, and this third only once every two years. The political complexion of the Senate can be changed only by a succession of elections.

But against such a responsible system the alarm-bell of *centralisation* is again sounded, and all those who dread seeing too much authority, too complete control, placed within the reach of the central Government sternly set their faces against any such change. They deceive themselves. There could be no more despotic authority wielded under the forms of free government than our national Congress now exercises. It is a despotism which uses its power with all the caprice, all the scorn for settled policy, all the wild unrestraint which mark the methods of other tyrants as hateful to freedom.

Few of us are ready to suggest a remedy for the evils all deplore. We hope that our system is self-adjusting, and will not need our corrective interference. This is a vain hope! It is no small part of wisdom to know how long an evil ought to be tolerated, to see when the time has come for the people, from whom springs all authority, to speak its doom or prescribe its remedy. If that time be allowed to slip unrecognized, our dangers may overwhelm us, our political maladies may prove incurable.

THOMAS W. WILSON.

from Can Representative Government Do the Job,
by Thomas K. Finletter

## CHAPTER II

# THE MEANS MUST BE STRENGTHENED

THE Constitution has shown considerable flexibility in adapting itself to changing conditions. The original plan for a weak central government has yielded often when strong policies were needed. In the nineteenth century we developed enough power to consolidate the nation, buy Louisiana, acquire Florida, win the Mexican War, push the frontier to the Pacific, and defend the Union in the Civil War. In this century we were strong enough to build the Panama Canal, to create the New Freedom and to fight a world war under Woodrow Wilson, and shortly thereafter to make the reforms of the New Deal and to fight a second world war under Franklin Roosevelt. It seems on first impression that whenever we need a military or expansionist effort or a period of reform, a Jefferson, Jackson, Lincoln, Theodore Roosevelt, Wilson or Franklin Roosevelt appears to head the government in a rush of centralized power.

But if we look at the record we find that the flow of power in peacetime is extremely irregular. The usual pattern has been long periods of negative government interlarded with short periods of strong action. Wartime is an exception, for then all the authority which is required to prosecute the war is turned over to the Executive. But in times of peace the normal condition has been the negative one which the authors of the Constitution intended. The periods of strong leadership in peacetime have been the exception. They have been more frequent in the twentieth century than before, but even so they have taken up only about half the time. The present day pattern of the American government in time of peace is an alternating system of strong and weak administrations which makes for very irregular governing.

This irregular flow of power endangers representative government in the United States. No government can survive unless it is able to get the results which the people want. And the alternating system is not capable of producing the steady flow of power which our national policies must have.

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There is nothing in our past record in foreign relations which gives us any reason to think that our government is ready in its present form to carry out the very difficult foreign policy which we have adopted. There is an immense gap between what we have shown we can do in foreign affairs and what we have said we are going to do. We have never before had a foreign policy which in peacetime needed the strong, consistent, and imaginative leadership which this attempt to enforce peace will demand. The experience of the past gives strong evidence that our means of governing in their present form are not up to the task. ...

In domestic affairs the record of the past is no more encouraging. The problem of maintaining full employment within a system which keeps the individual liberties is troubling everyone who feels deeply about our political freedoms and our way of self-rule. All that the comparable past offers us is the record of the violent fluctuations of the economic cycle between the two wars with its depressions, unemployment, and breadlines.

Experience teaches us that unless we make radical improvements in the procedures of the federal government, we will face the times after the war with a governing machinery which will be unable to carry out the vast commitments in foreign and domestic policy on which our hopes for a decent future are based.

The ends to which we have committed ourselves and our means of governing are out of balance.

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The reason for this is that the American system is so constituted that it produces a conflict between the Executive and Congress every time the Executive tries to be positive and strong. You cannot have a government capable of handling the most difficult problems that peacetime democracy has ever faced with the two main parts of it at each other's throats.

The cause of this conflict between Congress and the Executive is not human; it is institutional. The American people are as politically mature as any. Some nations cannot govern themselves under a regime of individual liberty, no matter what form of government is written into their basic laws. But the people of this country have the flair, the educational standards, and the traditions to make representative self-rule a success even under present conditions. The trouble is that we are working under—that is, within the limits of—a structure which makes the task of governing unnecessarily difficult. By failing to bring our techniques up to the needs of the present, we are giving a considerable and perhaps an unbeatable handicap to the powerful forces in the world which are everywhere trying to break down self-rule and individual liberty.

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To understand the cause of this conflict between the Executive and Congress we must know what the authors of the Constitution tried to accomplish at Philadelphia. For what they did then still controls us in large measure today.

Political freedom was their first concern. The State was to be negative. The individual was to be subject to the control of government only to the minimum necessary to keep internal order and to protect the country from attack. It was a revolutionary time here and in France, when liberty and the dignity of the individual were flaming ideals. Tyranny, either from legislatures or executives, was a bugbear to the men of the Constitutional Convention of 1787. They had just finished a war to be rid of executive abuse in the persons of the English king and the colonial governors. And during that war the Continental Congress and the legislatures of the new states had so mishandled their newly won independence of executives that they were in a disrepute equal to that of the king and the governors. The Philadelphia Convention wanted a government with very little power over the individual.

Being extremely able men, they accomplished what they set out to do. They arranged the executive and legislative branches in separate compartments, each checking and balancing the other so that neither could oppress the citizens. They made the relation between the two branches such that antagonism and counteraction would necessarily come if either of them ventured on an aggressive policy. They made it necessary for Congress, in its own self-interest, to hold down the Executive if it started to show too much activity; and vice versa. They did this so ingeniously that their scheme is still effective today. Every attempt at strong leadership even now runs squarely against this fundamental purpose of the Constitution.

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Now of course the system set up in 1787 did not stay in exactly its original form. The amending clause of the Constitution—dangerously rigid though it is—accounted for changes such as the direct election of senators and woman's suffrage. But these amendments did not touch the fundamentals of the structure. The important growth of the Constitution was customary.

The great customary changes were the growth of parties and the creation of the popular-leader presidency—both, it will be noted, having the effect of putting more power in the government and thus of getting away from the fundamental purpose of the Constitution.

There was reason for this evolution toward greater power in the government. The political demands and economic needs of the people of the United States in 1787 could be handled with a minimum of interference by the State. But as the nineteenth century wore on, conditions here and all over the world changed so that more and more the citizens had to call in government to help them with their problems. The great increase of population which followed the Industrial Revolution, both in Europe and the United States, and rising levels of education and therefore increased social standards, created new problems which *laissez faire* in economics and the rule of law in politics were not able to handle. In the twentieth century two world wars came along to give the final impetus. The tendency has been steadily toward greater reliance on the State. This in turn has of course called for stronger and more effective government.

This growth of the power of the State put a difficult problem to all nations, but especially to the politically mature countries who were determined to live under a regime of rule by the people and under principles of individual liberty. How could they make their governments strong enough to do the new positive work which was required of them and at the same time not give up their personal freedoms? Could they make the State powerful and still keep the great political liberties of the French and American revolutions? Or would the greater activity of the State necessarily mean the loss of the rights of the individual?

The less politically mature nations gave up the attempt at reconciling strong government with freedom. The problem was too much for them. They let the rights of the individual go, and glorified the State. Fuehrers, Duces, men on horseback or in bullet-proof automobiles but always in uniform, marching youths, racism, and the leader principle obliterated and dispersed what they called the decadent ideas of the Revolutions. Legislatures were anathema. The first act of the authoritarians when they came to power was to destroy their legislatures and the multiple party systems. It was direct democracy, circuses and bread, that is to say no democracy at all.

Others, the politically mature nations, adapted their democratic ways to the new conditions. The parliamentarians, the British, the Scandinavians, Dutch and Belgians, revolutionized their early-nineteenth-century governments. They put power into them. The device they used was, briefly, to have the Legislature take over the Cabinet—that is, the heads of the executive departments—from the kings, to make the Cabinet an offshoot of the Legislature by having the members of the former chosen from the latter, and to give the necessary power to the Cabinet to run the government as long as it was in office. They created techniques, such as the right of the Cabinet to dissolve the Legislature, to strengthen the power of the Cabinet. But simultaneously they set up counter-techniques, such as the right of the Legislature to dismiss the Cabinet from office. This kept the final authority of government in the Legislature and made it possible for it to permit the Cabinet to exercise a kind of dictatorial power as long as it did so to the general satisfaction of the Legislature and the people. The significant difference between the authoritarians and the parliamentarians is that in the course of making their governments strong the parliamentarians did not weaken their Legislatures. They gave power to their Executives, but they recognized fully the fundamental fact that only with a strong and independent representative legislature can freedom survive in the large modern state.

Let me emphasize this point. The difference between an authoritarian and a democratic state centers on the position of the representative body. If the Legislature is free and strong, authoritarian rule cannot exist. Without it, there can be no democratic government. Subject only to the sovereign people, the Legislature must have the ultimate power in a democracy.

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There was no doubt about the United States' having the political maturity not to go the way of the authoritarians. Moreover, we had the Atlantic and Pacific oceans to give us a relative security which made our work easier. Under the pressure of events we worked out a modification of our original structure of government which increased its power and therefore its ability to handle the greater demands which were being put on it.

The keystone of our constitutional evolution—the popular-leader presidency—was an accident. The Constitution had intended that the Electoral College would be a body of elder statesmen who would use their independent judgment to choose the man best qualified to be the Chief Executive. The Electoral College lasted in its original form for just three elections and then broke down. Parties grew up between 1788 and 1800, and from the first election of Jefferson on, the Electoral College became a mere registering machine which used no independent judgment. By the 1820's a second change completed the transition. The laws of the states were modified in the interval between 1788 and 1828 so that the people, and no longer the state legislatures, chose the electors. From that point on the President was chosen by direct popular vote, quite contrary to what the authors of the Constitution had intended.

The forces that were demanding stronger government seized on this unofficial amendment of the Constitution. Here was a way in which the checks and balances and the plan for negative rule could be changed. The popular election of the President made it possible for him to be the agent through whom strong government could be developed. The President was the head of the Executive, and positive policy can come only from the executive branch. The popular election gave the President the great authority that came from a mandate issuing directly from the source of all power. The President was elected by the whole people; congressmen and senators by local constituencies. The President came more and more to be recognized as the main representative of the people as a whole. He was the head of his party and thus controlled this new and powerful factor of government. Patronage was at his disposal, especially in the early part of his administration. He could and did appeal directly to the people over the heads of Congress when the Legislature was inert or did not act to his liking. The kings had become powerless because they got their power from the inferior source of heredity; the presidents of other republics who were elected by the legislatures were nonentities; but the popular election gave the President of the United States the opportunity, if he chose to take it, to be one of the most powerful executive leaders of the world.

Popular-leader presidents who led Congress with the aid of their party and made great policies by purely executive acts without consulting Congress accordingly appeared whenever the demand of events became insistent. In the beginnings of the Republic when John Marshall was laying down the great constitutional rules which consolidated the power of the federal government against the parochial force of local thinking, when war with England threatened the new government, and South Carolina sectionalism was raising an issue which finally proved to be insoluble, popular-leader presidents came to office to reject the checks and balances and to give strong rule to the growing country. Jefferson and Jackson showed the example to their twentieth-century successors. After them, when the issue of secession could no longer be avoided and the Union was threatened, events called out the greatest of the popular leaders. The Union safe, we relapsed into the orthodox type of presidency—either unassertive men or strong executives like Cleveland who held themselves in check because of their philosophical belief in the separation of powers. But the twentieth century would not put up with this negative kind of government. Two world wars, closing frontiers and increasingly difficult domestic problems demanded more positive rule. They got it. Nearly half the peacetime and all the wartime years of the present century have seen strong popular leaders in the White House.

Now this sounds like a perfect kind of government. Power when you need it, government minding its business when things are going well. Unfortunately that is not the way it works. For it is not the cessation of need which produces the reaction from strong rule to inactive government. It is another fundamental force which has no relation to the interests of the country. It is the basic conflict between the popular-leader solution and the historical purpose of the Constitution—a conflict which in turn creates the need of Congress to defeat the President in order to survive as an institution of the United States government. These resurgences of Congress do not take place only when the government has nothing to do. On the contrary they often take place when the need for positive and effective action is at its highest.

The pattern of government in this country is an alternation of power both between administrations and within administrations which is dictated not by the needs of the country but by the time cycle of the executive-legislative relationship. A strong presidency is usually followed by an orthodox administration in which the balance of powers is respected and a generally negative government results. Within each popular-leader administration the pattern is similar. At first the honeymoon period, when the need for action, the undistributed patronage, the force of novelty, and the enthusiasm which strong leadership always arouses, combine to create a period of great executive power when Congress is temporarily overwhelmed. The reaction soon comes. The patronage is disbursed, the novelty wears off, and the dead hand of the Constitutional Convention of 1787 makes itself felt. Congress reasserts itself, and strikes back violently to prove its place in the American system. The barometer of presidential power drops to a low level and stays there until a new popular leader comes to office to use a new honeymoon period for the hasty making of great policies.

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This conflict between the Executive and Congress is the most significant fact about the American government today. Unless something is done to cure it, it may prove to be a tragic fact. The difficulty is that the conflict is fundamentally imbedded in our system. The power of the popular leader is snatched from institutions which were intended to deny power. The President can put over his policies only by subordinating Congress. It is not like the parliamentary system where the Legislature, secure in its ultimate right to dismiss the Executive from office, can safely allow the Cabinet to run the country and even to dominate the Legislature itself. Congress cannot dismiss the President. It therefore cannot allow him to dominate it for long. For if, under the pressure of events and the need for strong government, we had a steady procession of popular-leader presidents exercising the kind of power that Wilson and Franklin Roosevelt had in the beginnings of their administrations, Congress would become a rubber stamp, and if it remained so for long, representative government and liberty would fall with it.

The alternating system is simply not good enough for the needs of the American State in the post-war period. Our new policies cannot be carried out by any such irregular apparatus. We cannot play with international peace and unemployment for a year or so and then drop them while we use up all our energy in a quarrel between the Executive and Congress. Aggressor countries will not take time out in their plans to break the peace while we play with the checks and balances. Unemployment will not cure itself while our government, torn with struggle between its two main branches, muddles incompetently.

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Clearly something must be done about this, for the consequences of not doing something are unbearable. If we fail to reorganize our government so that it will be strong enough to carry out the policies the American people want, we will be faced with the choice between two very disagreeable alternatives. Either we will give up our new policies because our representative system is incapable of handling them, or we will turn to some other kind of government—which may not have the weaknesses or the liberties of the representative form—which will do what the people demand.

I do not think that the American people will be willing to see their new great foreign and domestic policies defeated by a system of conflict between the two branches of their government. It may be that we will let our new foreign policy go by the boards. In times of peace, foreign policy—specifically a program of taking preventive steps to stop future wars—is intellectual and remote. It does not touch our immediate life or interests. The memories of past horrors fade and it requires high intellectual conviction and imagination to feel the importance of stopping a hypothetical blood bath of the future. In the coming struggle between inadequate government and the policy of intervention in world affairs to stop wars, inadequate government may well win.

But not so with our domestic policy. That will be immediate and tangible. Unemployment is no intellectual concept. The American people have recently gone through a decade of depression and misery and they do not intend to repeat the experience. Substantially full employment and social security are not mere campaign catchwords. They are living demands which the American people intend to see achieved—or else. Any government which does not substantially solve these problems will be repudiated. If the people think that the trouble comes from internal conflict between Congress and the Executive, they will not hesitate to demand more power and effective executive rule, even though that may mean a weakening or even a destruction of the authority of Congress. The concept that a free legislature is the keystone of individual liberty—profoundly true though it may be—will not stand up against the reality that the people do not intend to starve.

We have long been accustomed to our political freedoms and to the representative system which guarantees them. This familiarity has made us careless of their values; and unless we pay the price of eternal vigilance civil liberties will always be in danger. It is the reality of this threat which has led serious men to say that "if our government in its present form fails to meet their demands, the people will almost certainly destroy it and set up a totalitarian government in its stead"[1] and that "if it [Congress] fails to be constructive, there is no telling how long an impatient people will support representative government in America."[2]

If there is to be a move from the representative system in this country, it may be sudden or it may be gradual. If we run into extremely difficult conditions in our domestic economy and the people get the conviction that the quarreling between the Executive and Congress is incurable, they may throw over the whole attempt at self-rule with one stroke and authorize government by executive decree.

The gradual destruction of Congress is also possible. It could take the form of an increased use of executive orders instead of legislation in domestic affairs and of executive agreements instead of treaties in foreign matters, and of other devices to by-pass Congress. The condition might become so bad that public opinion would sanction the use of executive orders to the exclusion of congressional legislation. If that became the settled practice, whether all at once or by gradual steps, it would mark the death of representative government and the end of the attempt of the American people to govern themselves.

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[1] "Our Form of Government," Editors of *Time*, *Life* and *Fortune*, in *Fortune*, November, 1943.

[2] Senator Robert M. LaFollette, Jr., "A Senator Looks at Congress," *Atlantic Monthly*, July, 1943.

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There is, of course, another alternative which will keep our individual liberties and at the same time let us achieve the great foreign and domestic policies to which we are committed. It is to set up new procedures within our present structure of government which will make it normal for the Executive and Congress to work together instead of at cross purposes.

This is an entirely practical course. The American system of government is as capable as any of solving the problem which faces all democratic countries today—how to have a powerful Executive and at the same time a strong Legislature. Steps are already being taken in Washington which lead in this direction. The question is whether we will have the determination and wisdom to press these first steps to their goal; or whether, failing to do so, we will risk the destruction of our representative system and our individual liberties.

## CHAPTER XI

# A JOINT EXECUTIVE-LEGISLATIVE CABINET

THE idea of a joint executive-legislative cabinet goes much further than the Kefauver plan. The appearance of cabinet members on the floor of the House and Senate

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[*] It also provided for executive origination of the budget and the right of the executive to veto individual items in appropriation bills.

as Mr. Kefauver has suggested would mean that Congress would know what the Executive was doing. But a joint cabinet of the two branches would have Congress actually collaborate with the Executive in the making of policy. It would be a common meeting ground where all phases of national policy would be worked out by agreement.

A joint cabinet of this kind is not just a remote possibility. Proposals for it are coming from many sides, in and out of Congress. Something like a joint cabinet is now working most effectively in the form of the combined groups of the State Department and the congressional Foreign Relations and Foreign Affairs Committees which I have mentioned. It would not be a great step from these joint bodies which Mr. Hull has set up to a group which would cover the whole field of policy, domestic as well as foreign.

(3/A joint executive-legislative cabinet is in the direct line of evolution of our government. Practically all the many current proposals for simplification and reform of Congress and the executive branch call for the concentration of power in a small group or cabinet in Congress and a like concentration of authority on the executive side. If this were done, the next step to a combined executive-legislative cabinet would be almost inevitable. Clearly the purpose of making Congress and the Executive more effective working units is not to strengthen them to make war on each other. No seriously thought-out plan to improve the United States government can fail to arrive at the conclusion that the essential reform to which all others are subsidiary is to invent some technique which will bring the two branches together to work in harmony.

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The centralization of power in the Executive is already well advanced. The executive cabinet exists, and all that is necessary, once the wartime agencies disappear, is further to concentrate power in a small number of departments, each headed as now by a secretary.[1]

Congress, however, is in a state of decentralization and confusion—a fact which is becoming increasingly apparent to the American people. There is accordingly a great deal of criticism not only of individual members but also of Congress as an institution. Much of this criticism is destructive and some of it dangerous. Attacks which have the effect of creating public contempt for Congress play into the hands of the wrong forces. And unfortunately the battles between Congress and the President—the Supreme Court Bill was an exception—have the effect of making Congress look like a negative and querulous body which blocks irresponsibly the efforts of a president to carry out policies for the national good. This in turn drives a president to make direct appeals to the people *against* Congress, and that does no good to the standing of the Legislature before the people.

It is not only the conflict with the Executive which weakens the respect of the people for Congress. The lack of organization presents a sorry picture to the people. Fortunately this weakness is recognized by the members of Congress as well as by outsiders. Congress is being bombarded with suggestions, from within and without, calling for reform. At least twenty resolutions calling for improvement in congressional procedures were introduced in the 78th Congress. The Maloney-Monroney resolution, unanimously passed by the Senate, has made the most progress and is the most important. It calls for "a full and complete study of the organization and operation of the Congress of the United States" and for recommendations with the object of "strengthening the Congress, simplifying its operations, improving its relationships with other branches of the United States Government and enabling it better to meet its responsibilities under the Constitution."

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[1] The most detailed suggestion for reorganization of the executive branch is in "Our Form of Government" by the Editors of *Time-Life-Fortune* published in *Fortune*, November, 1943. This plan would center responsibility by making the Secretary of State and the Secretary of the Treasury the President's chief assistants on foreign and domestic affairs respectively. Mr. Joseph M. Jones in *A Modern Foreign Policy for the United States* (1944) makes a similar suggestion for the centralization of authority over foreign affairs in the Department of State.

Comment from outside Congress has struck the same note. The American Political Association Committee on Congress in a recent report concluded that there are three possible courses to be followed. First, to carry on unchanged, which would mean that the Legislature will "continue to decline . . . and that leadership (will) steadily shift to the Executive." Second, that procedural changes looking to more speed, better co-ordination, more efficient use of personnel and to a unified leadership might be made. "This course would be helpful but would be unlikely to do more than delay the relative decline of Congress in comparison with the President." Third, Congress may reappraise the whole problem of its relations with the Executive and with the public, and of its proper and possible functions in an era of wide and expanding federal powers. The Committee believes that although Congress has given thought to the second alternative, it has hardly touched on the third. "The time is propitious for Congress to reconsider not only its internal organization and procedures, but also its appropriate functions and place in our scheme of government."

The obvious weaknesses, always attacked in any study of Congress, are the seniority rule and the complexity of the committee system. The seniority rule, whereby the chairmen of the committees are selected not on the basis of their qualifications but on the length of their service on the committees, obviously makes it largely an accident if the best men get into the positions of power. Congress will never be a properly working body as long as this rule persists. If it is continued we may expect the Legislature inevitably to decline as a living force in the United States government. The times will no longer tolerate such anachronisms.

Resolutions to reduce the number of committees have been introduced in Congress and have been strongly urged by outside commentators. A resolution of Senator LaFollette calls for a reduction of the present number of Senate committees to thirteen. The usual suggestion however calls for a greater reduction—usually to nine or ten committees in each House—from the present extraordinary total of one hundred and five committees and twenty commissions. In supporting his resolution in Congress Senator LaFollette commented that "no person familiar with the situation in the Senate today can deny that there is a pressing need for committee reorganization and for the streamlining of the legislative branch of the government if it is to survive in the struggle for power which is bound to continue. . . . It is a matter of vital importance in the survival of representative government in our democracy."

Having reduced the number of committees to, say, nine in each House, the next development would be to combine the committees of the two Houses dealing with the same subject, and to have the nine chairmen of the combined committees form a joint legislative cabinet. The Senate Foreign Relations Committee and the House Foreign Affairs Committee, for example, would together form a Joint Legislative Committee on Foreign Relations with a chairman who in that case would probably be the head of the Senate committee. This chairman and the chairmen of the eight other joint committees would constitute the complete Joint Cabinet of Congress.

With this simplified organization of Congress, the way would be open and in all likelihood would be taken sooner or later for a combination of the Legislative Cabinet with the corresponding body on the executive side into a Joint Executive-Legislative Cabinet which would be the meeting ground for the two branches of government. Here would be the forum where policies could be worked out by discussion and compromise instead of at arm's length and by antagonism. The Joint Executive-Legislative Cabinet would be the bridge which could link the two branches together into harmonious action in the national interest.

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In the meantime another development is leading in the same direction. This other development has gone beyond the planning and thinking stage. It is now an actuality.

The Senate for some time has been demanding, with increasing insistence, a joint position with the Executive in the creation of foreign policy. Fortunately this demand by the Senate has coincided with a recognition by the Executive of the need for a closer relationship with the Senate and House on matters affecting foreign relations. As the need for harmony with Congress has become more apparent to the men in the Executive who have the responsibility for formulating the plans for the peace, we have had the good fortune to have in Congress a number of men who are as anxious as the Executive to avoid repeating the disastrous experience of 1919. Representatives Bloom, Hale, Herter, and others in the House, Senators Connally, Austin, Hatch, Vandenberg, Hill, Burton, Brewster, Fulbright, Ball, and others in the Senate—and this list is by no means exclusive—are among the congressional leaders who are ready to meet the Executive halfway or more in the interests of making the United States government work.

But these men are not willing to have Congress sit back and wait until the President and Secretary of State hand them a signed treaty to approve or reject. They want Congress to be in on the making of foreign policy. In effect, they want to go back to the literal provision of the Constitution which calls for the "advice" as well as the "consent" of the Senate to treaties—a provision which has been unobserved since the days of George Washington.[2]

This collaboration of Congress, according to the Senators, is not to be confined to the treaties of peace. It is to apply to all international agreements and conferences. Senator Ball has written that he wants members of Congress to be appointed to all the United States delegations who negotiate the constellation of international agreements which will surround the peace treaties—shipping, oil, aviation, monetary affairs, communications, commodity agreements. The Senate surely, and probably the House, must, he says, take part in all international negotiations at all stages. He regards it as a serious error that we did not have members of Congress in the United States delegation to the Moscow Conference, and in the delegations to the Food Conference at Hot Springs and the United Nations Relief and Rehabilitation Conference at Atlantic City in 1943. If we keep Congress out of the negotiation stage of international affairs it will, the Senator says, "endanger our participation in collective security. . . . Members of Congress know better than any outsiders what Congress is likely to approve and what it might reject. . . . The legislative partner in shaping our foreign policy should be a partner in the negotiating as well as the ratifying and implementing."[8]

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[2] *Constitution of the United States,* Article II, Section 2: [The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur.

Senator Ball's views are not peculiar to him. Senator Wiley had already gone much further when he introduced his resolution calling for a permanent body which would put the two Foreign Relations Committees of Congress on an equal basis with the Department of State in the formulation of foreign policy. The Wiley resolution called for a permanent foreign relations advisory council composed of the Secretary of State, the Under Secretary, the Chairmen and ranking minority members of the Senate and House Foreign Affairs Committees, and other members of the State Department and the Senate.

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Fortunately these two forces—the demand of Congress that it be allowed to take part in creating our foreign policy and the determination of the President and his Secretaries of State to win the peace as well as the war—have come together in most satisfactory form. In April, 1944, State Department-Congressional Committees on foreign policy were established at the suggestion of Mr. Hull. One group consists of majority and minority members—Republicans and Democrats—of the Senate Committee on Foreign Relations and the Secretary of State. A corresponding House of Representatives group also has been consulted by the Secretaries of State, in recognition of the fact that the House will play a large part in the implementation of foreign policy in the future.

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[8] Senator Joseph H. Ball, "Your Move, Mr. President," *Saturday Evening Post,* February 19, 1944.

The results of this joint venture have already been great. The whole atmosphere of handling the peace has changed. Senator Connally, Chairman of the Senate Foreign Relations Committee, is as ardent a supporter of our policy of joint international action to stop wars as are his former colleague, Mr. Hull, and Mr. Stettinius. Senator Austin, Republican, is a powerful supporter of the government's international policy. We now have an institutional meeting place where the Executive can consult the leaders of Congress on the difficult problems which are constantly arising in conferences like that at Dumbarton Oaks and in our other negotiations with foreign governments, *as these problems arise*. Congress on the other hand is fully informed of the step-by-step development of these negotiations. The likelihood of our having a foreign policy which will be acceptable to the Senate has been enormously increased by this procedure. This embryo joint cabinet has already shown that it is an indispensable part of our government.

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This joint action of the Executive and Congress is not a temporary alliance which will be dissolved when the treaties of peace are signed. The nonpartisan character will and should disappear, once the basic international structure is established. But since the problems of the peace are of a continuing nature we may expect that the habit of collaboration which the present crisis has compelled will continue after the war. There is no doubt that it will be needed if we are not to undo all we have achieved.

A permanent joint council of the Executive and Congress on foreign affairs will tend to expand its scope to include domestic affairs as well. What has produced this joint action of Congress and the Executive in foreign affairs? Clearly, a recognition of the fact that the issues are so serious that the traditional separation and antagonism of the two branches of government had to be discarded for the national good. Will anyone say that our domestic problems after the war will be any less difficult or pressing than our foreign affairs? Is not the matter of finding jobs for over 20,000,000 people, of keeping the economic cycle level, and of holding unemployment to a very low minimum as difficult as the keeping of the peace? Will not necessity drive us to stop the jurisdictional conflicts within the government when they affect the economic well-being, health, and security of our own citizens? Surely the depressions and unemployment of the time between the two wars are as horrid an example of what we must forever eliminate as is the destruction of Wilson's treaty.

The pressure of events thus will be toward the creation of a Joint Executive-Legislative Cabinet with jurisdiction on domestic matters as well as foreign. For the Executive such a common meeting ground with Congress is a necessity. If some device is not created within the government to do away with the present resistance by Congress to Executive-originated legislation, all plans of the Executive for domestic prosperity and international peace will fail. For Congress such a common meeting ground is a matter of self-preservation. Unless some technique is devised which will make Congress a constructive force and enable it to make a helpful contribution toward solving our problems of the future, the fears of those members of the Legislature who believe that the existence of Congress as an institution is threatened may well be realized.

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A Joint Executive-Legislative Cabinet could be set up by a joint resolution of the House and Senate and by an executive order of the President. It would require no congressional legislation and no constitutional amendment.

Composed of, say, nine congressional leaders and nine members of the Executive Cabinet, with the President at its head, meeting regularly and serviced by a competent secretariat, the Joint Cabinet would soon take to itself the origination of the major policies of the government. Congress would continue to have its regular and special committees which would initiate plans for legislation, but their ideas would be funneled to the Joint Cabinet where they would be harmonized with the parallel plans of the executive side. Instead of there being an "administration bill" which Congress would fight and a counter-congressional bill which the President would veto if he felt politically strong enough, a more carefully thought-out proposal would be produced by the Joint Cabinet in the first place.

Clashes like that between the Congress-sponsored 1944 tax bill (prepared by the Joint Congressional Committee on Taxation) and the administration-sponsored counterpart (prepared by the Treasury) would be ironed out in conference instead of being fought out by battle, as they were, in the customary manner—speeches in the House and Senate about congressional independence, talk of Congress reasserting its manhood, a presidential veto, the triumphant overriding of the veto, an open split between the President and his Senate Majority Leader, the resignation of the Treasury's General Counsel and tax expert, and an unsatisfactory tax bill as the final product—all carried on with great heat in the tradition of the separation of powers.

Instead of this disorderly way of deciding on national policy, the Joint Cabinet would use the method which has proved so successful in settling differences between the House and Senate when they enact differing bills on the same subject. The conference method of settling differences of opinion between the two Houses has proved so workable that we do not realize the difficulties inherent in getting two great bodies like the House and Senate to agree to the same text of a complicated enactment of national policy. The Joint Cabinet would provide a similar meeting ground for temperate discussions of differences of opinion between the Executive and Congress.

The American policies of the post-war period will need very carefully prepared programs of legislation, taxation and international policy. The whole must be a pattern which holds together, into which each of the parts is properly integrated. The origination of taxation and legislation, therefore, cannot be scattered as it is now among House, Senate, Executive, and organized groups. At present even matters like veterans' readjustment (the G.I. Bill of Rights), subsidies, industrial reconversion, and war surplus disposal, where there is general agreement on the policy to be followed, are usually covered by two or more bills circulating in Congress, with no adequate top, unified direction to make them parts of a coherent whole. A Joint Cabinet would provide this top direction and would coordinate the whole program of legislation, taxation, and executive policy-making.

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The existence of a Joint Cabinet also would do away with much of the resistance that now meets an Executive-originated bill. The members of Congress of the majority party would normally accept the judgment of their leaders in the Joint Cabinet who would have recommended the bill to them. The main cause of the suspicion which today meets a bill coming from the Executive is the fact that no member of Congress has had anything to do with preparing it. If the majority in Congress knew that its own leaders, chosen on their merits and not because of longevity of service, had helped frame the bill and favored its enactment, the traditional attitude of hostility to a new measure coming into Congress would largely disappear. Only powerful pressure from an organized group or some similar source would make the individual member of Congress reject the leadership of the members of his party representing him in the Joint Cabinet. The area of conflict between the Executive and Congress would be greatly reduced. A solidarity between the Joint Cabinet and its majority of the same party in the House and Senate would grow up. They would tend to become a team working together to create constructive national policies.

A Joint Cabinet would thus be able, first, to create coherent policies and, secondly, to lessen the resistance from Congress to the programs so created. It would not interfere with the deliberative function of Congress, for the proposals of the Cabinet could always be rejected by the full Houses if they so chose. Debate in Congress would be greatly improved, for the proponents of a bill would know all about it, having taken part in preparing it, and the opposition could demand and get a full discussion of the proposal from their colleagues of the opposing party. But, most important of all, a forum would be provided where the Executive and leaders of Congress could act together to work out permanent bases for collaborative action and for the elimination of jurisdictional quarrels.

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The Joint Cabinet would necessarily be partisan—that is, chosen from the majority party. Just as the party in control organizes and dominates the committees of the House and Senate now, so would they under this plan. Nonpartisan action might be necessary in time of war or other serious emergency; but the normal condition would be that which the two-party system demands.

The existing congressional-State Department committees are bipartisan, and Governor Dewey's support in the 1944 campaign of the Roosevelt administration's plans for an international organization to enforce peace was on the same basis. But these are special cases. In the first place American public opinion was aroused by the grim facts of existing war and would have resented any attempt by the party leaders to make political capital out of the issue. Secondly, a treaty is needed to authorize our joining an international security organization, and the constitutional requirement of a two-thirds vote of the Senate for the ratification of treaties is so difficult to satisfy that for practical purposes treaties have to be handled, if they are to become law, on a nonpartisan basis. Mr. Dulles' conversations with Mr. Hull in August, 1944, brought out clearly this difference between treaties (where the two-thirds vote requirement compels nonpartisanship) and the rest of foreign affairs (where the two-party system can operate normally). The joint statement of Mr. Hull and Mr. Dulles agreed to the nonpartisan approach to the treaty which would set up the security organization, but the conferees expressly reserved to the Republican party the right of opposition and debate on all other phases of foreign policy.

This nonpartisanship is not an unmixed good. It has a star-chamber aspect in that it involves an agreement of both parties to suppress public debate on an issue. It may be accepted that when the people of the country are in agreement on some broad principle—such as joining an international organization to enforce peace—there should be no opposition to this policy for purely partisan reasons. But that is not to say that the details of such a policy—which often are as important as the general principle itself—should not be subjected to full scrutiny and debate. And that is exactly what happens when a treaty is made nonpartisan by agreement of the national parties.

Nevertheless with the two-thirds provision as it now stands, there is nothing else to be done, for if a policy which is cast in the form of a treaty is allowed to become a partisan issue, it will rarely become law. It has been suggested that one way of avoiding this difficulty is to extend the practice of calling international arrangements by the name of executive agreements instead of treaties, thus avoiding the two-thirds requirement and, in some cases, by-passing Congress entirely. This was done in the case of the United Nations Relief and Rehabilitation Administration, which was set up in the form of an executive agreement and was approved by a joint resolution of the House and Senate by majority votes. It has even been suggested that the basic treaties relating to the peace should be handled in this fashion. But there is little evidence that the Senate is willing to concur in this gradual reduction of its authority. On the contrary the Senate only recently insisted that the oil agreement between the United States and Great Britain—a matter not of the very first importance—be submitted to it in treaty form.

The conclusion seems inevitable that the two-thirds provision should be changed to allow the ratification of treaties by majority vote of both Houses. The two-thirds provision will always be a major stumbling block in the path of our foreign policy, for we cannot always count on agreement between the parties as to treaties. And without the ability to make binding engagements with other governments we can have no complete foreign policy.

The most solid argument against this change is that a treaty is the law of the land and unlike acts of Congress cannot be changed without violating a commitment to another government. A treaty, therefore, it is said, should require a more solemn vote than an act of Congress. Against this is an array of arguments which seems conclusive. The two-thirds provision was put in the Constitution when parties did not exist. It is contrary to the premises of the two-party system and to the democratic principle of majority rule. It makes for the suppression of debate on important issues of the day, it causes the Executive to evade its provisions by the use of executive agreements and thus takes away from Congress a lot of matters (the destroyer deal with Great Britain, for example) which otherwise would and should be subject to its jurisdiction, and finally, it is an almost impassable barrier to a foreign policy of the kind to which we are now committed. The argument for no change is persuasive only if premised on a dislike of our foreign policy of aggressive intervention in world affairs to stop wars.

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(11) Both the Executive and Congress, as well as the people, would gain by a Joint Executive-Legislative Cabinet composed of members of the majority party. The President's position would not be weaker if such a Cabinet were a part of our government; indeed he would have a greater ability to get his policies accepted by Congress than at present. He would dominate the executive side of the Cabinet, for he would have the power of asking for the resignation of any member from the executive branch who failed to follow his leadership. He would still have the enormous prestige and power which come from the popular election.

Congress would gain because its leaders would know what was being done and what was being planned. It would have a part in policy at the important time—when it was being made. Congress would become a great factor in the constructive side of government, a role which its present special committees on post-war planning, taxation, and other matters will never give it under the present system.

But the big gainers would be the American people. For a Joint Cabinet would be a major step toward converting the American system of antagonistic powers into one in which the two major branches of government worked together for the common interest.

## CHAPTER XIII

# AN AMERICAN SOLUTION

A POSTSCRIPT is needed to make it clear that it would be a natural development of the American form of government—not an imitation of any foreign system—to set up a Joint Executive-Legislative Cabinet and to give its leaders the right of dissolution. It would be an American solution; we would not borrow the forms of any other country, but would evolve our own. None of the basic institutions of the American presidential system would be touched.

The fundamentals of our form of government are the popularly elected President; the bi-cameral system, wherein the House is apportioned equally and therefore democratically among the people, but wherein each state has two senators regardless of population; the federal principle, which does not give complete sovereignty to Congress but only certain enumerated and limited powers; the principle of judicial supremacy, by which the courts have the right to judge of the validity of acts of the other branches of the

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[*] Dr. W. Y. Elliott, in *The Need for Constitutional Reform* (1935), proposed a right of dissolution in the President; but only the House and Senate would be dissolved—not the Presidency. Mr. Henry Hazlitt in *A New Constitution Now* (1942), also called for the right to dissolve the House and Senate. William Macdonald made a similar proposal in *A New Constitution for New America* (1921).

government; and, finally, substantially complete adult suffrage in the elections to all offices, federal, state, or local. The fixed terms of office of the House, Senate and Presidency are not to be put in this category. The fixed terms of office represent no principle at all. They are merely a mechanical part of the processes of government and should be judged only by the test whether their effect on the final product of governing is good or bad.

If any of these fundamentals of our government were touched by the plan for a Joint Cabinet and the right of dissolution, we might have to regard the plan as doing violence to the American system. But no one of them is in any way affected.

The President would still be chosen by direct vote of the people. He would still be the head of his party and would control the executive side of the Joint Cabinet. The proposal obviously does not concern the jurisdiction of the Supreme Court or the principle of universal suffrage —except indirectly in that the power of dissolution would give the people more effective control over their government than they now have.

The right of the states regardless of size to equal representation in the Senate would be untouched. This may be undemocratic and undesirable, but it is one of the most deeply rooted of our institutions—for by express provision of the Constitution no state may be deprived of its equal suffrage in the Senate without its consent. It has been suggested that this survival of the Great Compromise of 1787 should be repealed in effect by reducing the powers of the Senate and thus making valueless the right of equal representation of every state in that body; but this study is not concerned with that question.

The federalist structure of enumerated and limited powers is not touched. Recent decisions of the Supreme Court of the United States have so extended the authority of the federal government over agriculture, production in industry, and wages, hours and conditions of labor, that the notion of limited, enumerated powers in the federal government has been largely destroyed. But this subject also is not within the scope of this study. A proposal to make the workings of the federal government better within the limits of its authority does not touch the issue of what that authority should be.

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It has been suggested that instead of trying to evolve our own method of government we should adopt the parliamentary system by constitutional amendment.[1]

There is no question but that the parliamentary form in England, the Scandinavian countries, Belgium and Holland, and the similar system of legislative supremacy of Switzerland, are excellent forms of government for those countries. In each, however, it is different; for no form of government can be universally applicable. The system in each country varies according to the needs and character of the peoples. Its main characteristics are the result of custom. Rarely is the system as such incorporated in writing in the statute books; only in Eire and to a limited extent in Finland is an attempt made to spell it out in the laws.

When it is proposed that the United States adopt the parliamentary system the suggestion in effect is that we give up the popular election of the President. The basic difference between the parliamentary and the presidential systems is that in the parliamentary form the chief of government and his principal lieutenants (the Prime Minister and the Cabinet) are chosen from the membership of the Legislature and are responsible to it; whereas in our presidential system the chief of the government is chosen by the people by direct popular vote and has an authority parallel with that of the Legislature.

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[1] See, for example, Henry Hazlitt, *A New Constitution Now* (1942); William Macdonald, *A New Constitution for a New America* (1921).

It is remarkable, in view of its history, that the popular election of the President has come to be the outstanding characteristic of the American system. For the popular election crept into our form of government by accident, and quite contrary to the intention of the authors of the Constitution. Proposals for the popular election were rejected by the Constitutional Convention every time they were made. It was even said that it would be "radically vicious" to have the Executive chosen by the people and that "it would be as unnatural to refer the choice of a proper character for Chief Magistrate to the people, as it would, to refer a trial of colors to a blind man." The Convention also foresaw, hazily, where the choice of candidates would lie if the President were popularly elected. They feared that "one set of men dispersed through the Union & acting in concert" such as the "Order of the Cincinnati . . . will in fact elect the Chief Magistrate in every instance, if the election be referred to the people."

The Convention voted on four occasions in favor of the election of the Chief Executive by Congress. But as the final draft was being made they were persuaded to abandon this plan by the argument that it violated the principle of the separation of powers and by their memory of the recent abuses by the state legislatures. The Convention thereupon adopted another method of indirect election, the electoral system. And an important reason for adopting this complicated way of electing the President was that it avoided a direct choice of the Chief Executive by the people.

The way the party system, aided by state legislation, repealed this provision of the Constitution is well known. In the first two elections the electoral system, although not put to a test, worked as had been planned. Everyone, the political leaders as well as the people, was in favor of Washington. There was no party system to affect the free discretion of the electors. The electors accordingly chose the man whom they, and the people as well, considered the best qualified for the office.

But with the election of John Adams in 1796 the party system, acting through the congressional caucus, began its inroads on the system of free decision by the electors. In the next election in 1800 (Jefferson-Burr) the first of the two great changes which were to revolutionize the method of choosing the President took place. Between the election of Adams and that of Jefferson two national parties had developed and freedom of decision by the electors ceased to exist. Party discipline made the electors registering machines who voted automatically for the candidate named by the party. Only rarely since that time have electoral votes been cast contrary to the popular vote.

The second change soon followed. State election laws were revised so that by 1828 the electors, originally chosen by the state legislatures, were elected by direct popular vote. The electoral system now achieved the result the authors of the Constitution had decided to avoid. The people elected the President directly, or rather they made their choice between the two candidates offered to them by the party conventions. The plan of the Philadelphia Convention that the elected leaders of the country should freely choose the best available man to be the President was now dead.

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Out of this informal amendment of the Constitution has come the American presidential system. It has been said that if the original plan of the Philadelphia Convention had been accepted "parliamentary government would have developed in America and modern publicists would have displayed their enthusiasm and talents in demonstrating the merits of that particular system."[2] Whether or not this is correct, the fact is that the popular election of the President is now the keystone of the American system and has been such for nearly a century and a half. The people will not agree to give it up. Nor will they adopt any foreign form of government, or indeed, in the visible future, consent to a change in any of the fundamentals of the American presidential system. Indeed, to talk of adopting the parliamentary system has a positively harmful effect in that, being an impractical proposal, it tends to build up resistance to any change at all.

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Our institutions of government, if they are to grow peacefully, will necessarily do so in a gradual, evolutionary way. The American presidential system, like the parliamentary, is a historical not a logical fact.

[2] Charles A. and Mary R. Beard, *The Rise of American Civilization* (1935), cited in W. E. Binkley, *The Powers of the President* (1937).

Now there is very little difference in the fundamentals of the parliamentary and presidential systems—much less, certainly, than is commonly supposed—for the reason that the fundamentals of all representative democracies must be substantially the same. The people, acting through their legislative body, must have the final power of the State—else the government is neither democratic nor representative. There must be an executive which will do the positive business of government—else the government will be weak and will be repudiated. The variations of technical arrangements which are available to accomplish these two fundamentals are many; but in their essentials they can diverge but little because of their common acceptance of these two controlling principles.

The superficial differences between the presidential and parliamentary systems are the result of the historical facts out of which the two systems emerged. The British government, which we usually think of as the prototype of the parliamentary system, started on its present course with the Revolution of 1688, which dethroned the Stuarts and their high conception of the royal prerogative and established the principle of the supremacy of the Legislature. Up to that time the British Parliament had been carrying on the battle with the Executive—the Crown—which is the normal condition of all developing representative governments—for it is the struggle between absolutism and liberty. Inevitably in a politically mature country like Great Britain the Legislature won. For gradually the suffrage—and therefore the source of power of Parliament—was extended so that it finally became almost as wide as the adult part of the population. The British Executive of 1688, the Crown, had no such moral base, for its authority came from force and heredity. It had tried to create a moral foundation for its power through the doctrine of the divine right of kings, but that did not last long in the face of the broad human representation of Parliament.

The Revolution of 1688 was a struggle between the royal prerogative and the rule of law—that is, between the Executive and the Legislature. On the one side was the Crown, the Church, and sometimes the French king. On the other side were the representatives of that part of the people which voted, led by the Whig faction in Parliament. The issues were the right of the Crown to maintain a standing army, to control the judiciary through the right to appoint and remove judges, and to tax without the approval of Parliament. The dispute was settled in favor of Parliament by the force of arms of William of Orange. The principle of the supremacy of the Legislature was firmly established. James II, the last of the Stuarts, fled, and the Bill of Rights and the Act of Settlement resolved all the points which had been in dispute in favor of Parliament. The power of the Crown was not entirely destroyed by this one blow, for it took two centuries to remove the last vestige of kingly authority; but after 1688 it was only a question of how long it would be before the power of the Crown was completely eliminated.

The important point for our purpose is that having destroyed one executive—the Crown—Parliament had to invent another. This it did by taking over control of the ministers—the heads of the executive departments—by insisting that they be members of Parliament and by establishing certain principles and procedures the effect of which was to create an entirely new, independent executive—a cabinet headed by a prime minister. Interlocking techniques were set up to achieve or maintain the two objectives of which I have spoken. To make the Cabinet strong the principle of collective responsibility of the Cabinet and the right to dissolve the House of Commons grew up, and the discipline of the parties became tighter. To preserve the supremacy of the Legislature, Parliament had the right to put the Cabinet out of office.

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Similar systems grew up in the Scandinavian countries and in Holland and Belgium—each based on the principle of legislative supremacy and the need for a sufficiently strong executive, but each with considerable variations from the British model because of the differing needs of each country. The Swiss adopted a different form, in that they made their Cabinet truly an agent of the Legislature. For if a Swiss cabinet is defeated by the Legislature it does not resign but, recognizing that it is a creature of the representative body, modifies its policies to accord with the Legislature's decision.

The French Third Republic followed the British model. They set up a cabinet chosen from the Parlement. The Cabinet was subject to dismissal by the Legislature. But unfortunately, by a historical mischance the balancing, compensating right to dissolve the Parlement was denied to the Cabinet. The French thus failed to reach the double objective they were seeking; for the Executive was not strong enough and they were doomed to a regime of weak and instable cabinets.

The British model also was followed by many of the new republics set up in Central Europe following the Treaty of Versailles, but this form of government was not appropriate for them, and with the exception of Czechoslovakia the representative system failed in Central Europe.

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The circumstances surrounding the American evolution were entirely different. We had no hereditary king, or any other form of absolute executive to deal with. We took up the problem at the point where the British were when they had substantially destroyed the royal prerogative and were seeking to create a new executive to take the place of the kings.

Our evolution took the course, as we have seen, of an executive elected directly by the people, and therefore having very great potential power. What would have happened if we had followed the original plan of the authors of the Constitution for the election of the Chief Executive by Congress, or even the plan for an Electoral College as set out in the Constitution, is not clear. We might have developed a parliamentary form, as Professor Beard has suggested, although it is hard to see how that could have been done with our practice of fixed elections. Or we might have followed the Swiss evolution where the Executive is the agent of the Legislature. But whatever course we would have followed, it is clear that we would have had a system where the Executive was powerful enough for the needs of the country and where Congress would have had the ultimate authority.

History decided that we should have an independent, powerful executive, as do the parliamentary governments. And it is remarkable how closely the presidential system parallels the parliamentary form despite their differing historical evolution. In both the Legislature is supreme in that it has the final right to say no to the Executive. In both, the Executive is independent and strong. Indeed Bagehot has gone so far as to say that the method of electing the Chief Executive is the same in both systems. "We have in England an elective first magistrate as truly as the Americans."

The only difference between the two systems lies in their secondary techniques—in the devices which have grown up for developing the strength of the Executive. The experience of the parliamentary governments has shown that the conflict between executives and legislatures can be largely done away with by these secondary devices. Bridges can be built to bring the two branches together. The secondary methods differ in the two systems because of the differing needs which have created them, for up to the present Great Britain especially has needed strong rule more than the United States. But now we also need a strong government. Our task now is, not to talk about adopting the forms of government of other countries but to develop those procedures which will give us a stronger executive and will at the same time preserve the ultimate and supreme power of Congress.

The American people are, I believe, ready to approve any change which is designed to bring our government up to date with the new demands being put upon it, and is gradualist—not revolutionary—in form. A Joint Cabinet to bridge the present gap between the Executive and Congress, fortified with the power of dissolution to make it easier for the two branches to work together, is the most immediate advance to be made. It would be only one more step in the long evolution of a form of government which has been in constant process of growth since the day it was established.

## *APPENDIX B*

# CABINET MEMBERS ON THE FLOOR OF CONGRESS

Justice Story[1] thought the appearance of cabinet members on the floor of Congress desirable for several reasons. First, unless the heads of departments have the right to speak in person before Congress they have no way of proposing or vindicating their own measures in the course of debate. The greatest security and strength of republican government, open and public responsibility for measures, is thus lacking. "If corruption ever eats its way silently into the vitals of this republic it will be because the people are unable to bring responsibility home to the Executive through his chosen ministers." Moreover, without this right to debate its proposals before Congress "the Executive is compelled to resort to secret and unseen influences, to private interviews, and private arrangements . . . instead of proposing and sustaining its own duties and measures by a bold and manly appeal to the nation in the face of its representatives." Also, unless members of the Executive are allowed to debate on the floor, "measures will be adopted or defeated by private intrigues, political combinations, irresponsible recommendations, and all the blandishments of office, and all the deadening weight of silent patronage." Finally, if the cabinet members were obliged to appear on the floor of Congress "it would compel the Executive to make appointments for the high departments of government, not from personal or party favorites, but from statesmen of high public character, talent, experience, and elevated services; from statesmen who had earned public favor and could command public confidence. At present gross incapacity may be concealed under official forms, and ignorance silently escape."

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[1] Story, *Commentaries on the Constitution of the United States,* (1833).

The proposal was renewed in 1881. In that year the Senate (Pendleton) Report [2] supported a bill to admit cabinet members to the floor for debate. The arguments of Justice Story were used. The Report met squarely the objection that the powers of government must be kept separate and that the appearance of members of the Executive on the floor of the Legislature might be said to violate this principle.

> Your committee is not unmindful of the maxim that in a constitutional government the great powers are divided into legislative, executive, and judicial, and that they should be conferred upon distinct departments. These departments should be defined and maintained, and it is a sufficiently accurate expression to say that they should be independent of each other. But this independence in no just or practical sense means an entire separation, either in their organization or their functions—isolation, either in the scope or the exercise of their powers. Such independence or isolation would produce either conflict or paralysis, either inevitable collision and inaction, and either

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[2] *Senate Report No. 837*, 46th Congress, 3rd Session, February 4, 1881. The Committee consisted of Geo. H. Pendleton, W. B. Allison, D. W. Voorhees, J. G. Blaine, M. C. Butler, John J. Ingalls, O. H. Platt, and J. T. Farley.

> the one or the other would be in derogation of the efficiency of the government. Such independence of co-equal and coordinate departments has never existed in any civilized government, and never can exist . . . If there is anything perfectly plain in the Constitution and organization of the Government of the United States it is that the great departments were not intended to be independent and isolated in the strict meaning of these terms; but, that although having a separate existence, they were to cooperate each with the other, as the different members of the human body must cooperate with each other in order to form the figure and perform the duties of a perfect man.

The Pendleton Report also discussed the objections to the proposal which were then current. These objections were the same as those which the pending Kefauver resolution is meeting—that the appearance of cabinet members on the floor would increase the influence of the Executive on legislation, or contrariwise that it would weaken the influence of the Executive by making the department heads independent of the President, and that it would take up too much of the time of the Secretaries. The Pendleton Report met this latter point with the suggestion that Under Secretaries be appointed to relieve the Secretaries of most of the burden of administration, a suggestion which has been adopted and is now in practice.

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Any proposal to create an orderly procedure for giving Congress full information of executive operations will meet a deep resistance from both branches of the government. Tradition will form a large part of this resistance. And the opposition will be the stronger for the fact that it is not entirely unreasonable. It is not self-evident that a full interchange of information between the two branches will necessarily make for better government.

Looking at the question jurisdictionally—that is, from the limited point of view of its effect on the authority of the two branches in relation to each other—the improvement of the channels of information would strengthen Congress. The Kefauver plan should receive a favorable reception there. Isolation from what the Executive is doing does not make for greater power in Congress. On the contrary it is because of this isolation that Congress has little part in the creation and indeed is inadequately informed of the great policies which are made under the executive policy-making power.

The argument that the members of the Executive would be able to bring overriding pressure to bear on Congress by the force of their speeches delivered in person on the floor of the Houses is not convincing. This objection was successful in one precedent-making case when Alexander Hamilton was denied the right to present his views on the floor of the House; but the fears of the First Congress do not commend themselves today. The modern President already has and uses many ways of appealing directly to the people over the head of Congress when the two branches are deadlocked on policy. The arguments of cabinet members and agency heads at the question hour would add little to the power of the President to bring contested points before the people.

On the contrary, the question hour would have the merit from the point of view of Congress that the opinions of the congressmen and senators would be published along with those of the Executive, thus presenting both sides of any contested point. And, since one effect of the question hour would be to provide a central point for airing differences of opinion between the executive and legislative branches it would be expected that the number of unilateral appeals by the Executive to the people over the heads of Congress would be lessened.

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From the point of view of the Executive, the case for the question hour is less clear. The standard argument against the proposal from the executive side is that it would weaken the position of the President by building up the stature of the members of the Cabinet; but it is difficult to give much weight to this argument. The President has the power to dismiss any member of the Cabinet at his discretion. No cabinet member, an appointed official, could stand up against a strong President chosen by the vote of the people.

There is however an important consideration which weighs heavily against the question hour from the point of view of the executive branch. Any procedure for keeping Congress currently informed of executive plans and operations might well interfere with the already difficult task of the Executive in the creation of positive policy. The executive branch is the body which has to get things done. When legislation is needed to implement a policy, Congress of course has to be consulted. But there is the large field of pure executive action where policy can be made without the Legislature. And the doctrine of the separation of powers justifies the Executive in making policy by executive act without consulting Congress in advance. The classic fallacy that the Executive merely administers the laws in a mechanical way and that major policies are made only by legislative action conveniently supports this important power of the Executive.

If however we put classic dogma aside and face the fact that executive acts often create policies at least as important as those embodied in congressional legislation, especially in foreign affairs, we necessarily reach the conclusion that the deliberative power of Congress should extend to these executive policies as well as to policies created by legislation or treaty.

There is, though, an objection of great weight to such a course. Under our form of government Congress is not responsible in the exercise of the deliberative function since it cannot be held immediately accountable for its actions. With the fixed terms of office of the House and Senate, if Congress rejects a proposal of the Executive there is no way in which the Executive can challenge the decision before the judgment of public opinion. The result is freedom on the part of Congress to be irresponsible, that is to yield to pressures or parochial considerations which might not control it if its members had to stand for an immediate election on the issue in question. And if the Kefauver plan were adopted, every important policy of the executive branch would be known to Congress as it developed. Differences of opinion, or even obstructive tactics if the majority in a House were hostile to the President, would thus be injected into the one area of action where now the Executive has a relatively free hand. It is understandable that opposition to the Kefauver resolution is found most strong in those members of the executive branch who have had experience as members of Congress.

But if we look at the Kefauver proposal not from the limited point of view of its effect on Congress or the Executive but rather as to its possible influence for good on the government as a whole, the proposal has great merit. It would democratize executive policy-making by subjecting it to the jurisdiction of Congress' deliberative function. It would give the public greater knowledge of what its government is doing. It would make for more co-operation between Congress and the Executive on legislation and treaties. For it may be assumed that if Congress were no longer excluded from information about executive policy-making it would be more co-operative on those matters which do require the approval of the Legislature. The only troublesome point is that the Kefauver plan might subject executive policy-making to the same uncertainty and cyclic disturbances which now prevail in the case of bills and treaties.

This latter objection should not prevail. For if we examine it, it is an argument that our system of government will not work if Congress has the power which any legislature must have in a regime of self-rule. The argument for keeping things as they are rests on the proposition that positive government cannot exist if Congress is to be consulted about policy. It asks us in effect to carve out the great field of executive policy-making and to exempt it from the processes of representative government. For by so doing we would have one area at least in which positive and consistent policies could be had.

The need for a free hand is especially strong in those matters which are the subject of executive policy-making.

It may therefore be argued that foreign negotiations, which are the subject of a large part of this kind of executive action, cannot be carried on within the limitations of full debate in Congress and with the delays and obstructions that inevitably will come if the Legislature is consulted on foreign policy during its formative stage.

There is great doubt whether in fact our foreign policy would be hampered if Congress were brought into it in this way. But even if it would be, there is little to be said for keeping Congress out of it. The price for the additional effectiveness is too high. The royal prerogative whereby the king had the sole right of making war and peace has never been accepted in this country. It is expressly denied by the Constitution through the grant to Congress of the war-declaring power and the right to deliberate on treaties. All that remains of the royal prerogative is the practical consideration that in foreign relations the right of initiation and of negotiation must of necessity lie in the Executive. The power of final decision on the great policies of foreign affairs should be in the Legislature.

The people of a modern democracy want to have their say about the decisions which affect their relations with foreign countries and have as their stake the issue of war or peace. Especially is this the case in the United States which is about to enter a period in which our participation in world affairs will be greater than ever before.

It therefore follows that the unique power of the executive branch in foreign relations should not go beyond the practical necessities of the situation. Even in time of peace a certain latitude in secrecy has to be allowed to the executive branch in the handling of negotiations with foreign governments. But the general principle should be to disclose all important steps to Congress before they have irrevocably bound the government, in order that the great policies in foreign affairs may be subjected to the same processes of democratic deliberation as our domestic policies. To provide for this disclosure some regular and orderly procedure such as the question hour is necessary.

I have emphasized executive policy-making in foreign relations because the most important policies which are made by the Executive without consultation with Congress are those which have to do with foreign matters. There is of course much policy-making by purely executive act in domestic matters as well, and there is the same need for orderly deliberation on these issues as in the case of foreign policy. Executive action in foreign affairs is however the more important, for it carries with it the great issue of the national security.

It may be that the fears of those who oppose the question hour are well founded and that the result of keeping Congress fully informed of executive acts would be to weaken our foreign policy by injecting the conflict between the two branches of government into it. The lack of any method of making Congress immediately responsible to the judgment of public opinion might create that result. But the remedy would seem to be to face that problem if it arises and to change our procedures to correct it, by constitutional amendment if necessary. The alternative of avoiding the issue by excluding Congress from one of the most important areas of policy-making is to revert to the ways of the past and to follow the methods of the peoples who have been unable to maintain a regime of self-rule.

The solution which must be reached is to subject the whole field of executive action to the deliberative power of Congress and at the same time prevent that power from being used in an irresponsible manner.

# from The Twilight of the Presidency,
by George E. Reedy

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## VI | CABINET AND CONGRESS

The cabinet is one of those institutions in which the whole is less than the sum of the parts. As individual officers, the members bear heavy responsibilities in administering the affairs of the government. As a collective body, they are about as useful as the vermiform appendix—though far more honored.

The late President Kennedy was almost openly scornful of the institution. He did not express his feelings in public statements but numerous "background" stories in the press—obviously based on direct contacts with him—made his position clear. He held very few cabinet sessions and sought instead to improvise top-level groups which would have some meaning.

In the Cuban missile crisis, for example, he not only ignored the cabinet but even broadened the National Security Council—the president, the vice-president, the secretary of state, and the secretary of defense. National policy was directed by an ad hoc "executive" committee composed of officials in whose judgment he had an unusually high degree of confidence. According to the accounts of many who were present during the deliberations, the most important was probably his brother, Attorney General Robert Kennedy.

The Kennedy thesis that the cabinet was not a useful instrument was proved to the hilt by his successor, Lyndon B. Johnson. It is doubtful whether any president in our history made more of an effort to elevate the status of the institution, and the result was totally negative. Cabinet meetings were held with considerable regularity, with fully predetermined agendas and fully prewritten statements. In general, they consisted of briefings by cabinet members followed by a later release of the statements to the press. It was regarded by all participants except the president as a painful experience, somewhat akin to sitting with the preacher in the front parlor on Sunday, and the press was quite successful in concealing its enthusiasm for the news releases that followed. It should be noted that a special assistant had the full-time job of thinking up topics for the cabinet. No governmental group in the mainstream of public life ever needs a special effort to devise reasons for meeting.

Individual members of the cabinet had great influence on the president at various times—notably Robert S. McNamara, Dean Rusk, and Stewart L. Udall. But this had nothing to do with their position in the cabinet and only slightly more to do with their status as secretaries. Essentially, it was the personal desires of the president that determined the favorite and, as Mr. McNamara learned, favor that is granted is favor that can be withdrawn.

The issue of the cabinet is of interest to this book only in the sense that it could be one instrumentality for keeping a president in contact with reality. There need be no waiting for the answer. It is not such an instrumentality and cannot be. At best, it constitutes a group of oddly assorted advisers with only a few working interests in common. The usefulness of an adviser under any circumstances depends upon the willingness of his audience to listen.

In many respects, it is unfortunate that the cabinet cannot play this role. Cabinet members tend to be men of distinction, a status which does not assure the possession of capacity and breadth of vision but which lengthens the odds that such qualities will be present. The natural desire of any political figure to broaden the base of his support leads to appointments which are always well balanced geographically and sometimes well balanced politically. Finally, the secretaries tend to have that serenity that comes from discharging specific responsibilities and that tends to make men more objective in their evaluation of a situation. By every criterion, cabinet advice should be good advice—at least, well tempered, informed, and prudent.

There is one missing ingredient. Even though a president may make political use of the members, individually and collectively, it is not a political body. A cabinet meeting may be called to cloak an important political move with an aura of respectability. Cabinet members may be sent around the country to defend a presidential policy at public opinion forums. Individual secretaries may even hit the hustings and plug for candidates during an election campaign (but never, by tradition, the secretaries of state or defense). Patronage problems may be centered officially in a cabinet member (usually the postmaster general). But these are all moves directed by the president. They do not lie in the realm of individual choice. The secretaries do not have a political status and it is considered bad form for any one of them to deviate in the slightest from the line laid down by their chief—so bad that deviation usually spells an end to a public career.

An outstanding example of such deviation in the past few decades was presented by the Iowa mystic Henry A. Wallace, a man who had remarkable appeal but who confused the American cabinet system, along with many other things, with the system of a parliamentary government. As secretary of commerce, he took strong (the word "sharp" was inappropriate for Mr. Wallace) issue with Harry S Truman. Mr. Truman was unusually tolerant about such things, but he could not have a member of his official family challenging the whole basis of his foreign policy. A parting of the ways was negotiated within hours after one of Mr. Wallace's speeches. The latter's subsequent political career was notable only for some very brief, very odd, and very dreamlike alliances that culminated in a humiliatingly unsuccessful attempt to damage Mr. Truman's prospects in the 1948 election. After that, there was only obscurity.

The interesting feature was the reaction to the Wallace speech that led to the rupture. There were a good many people who agreed with what he had to say (primarily that stronger initiatives should be taken to break the deadlock of the Cold War) but who were incensed over what they believed was disloyalty to the chief. They felt that he should have resigned from the cabinet first and established an independent political position before criticizing the president. It is difficult to judge how deeply such opinions were held among the public, as the conduct of the Progressive party, which adopted Mr. Wallace as its candidate, was hardly calculated to win widespread popular support. It was an organization more interested in gaining converts than in picking up votes and the electorate reacted accordingly. Nevertheless, Mr. Wallace's vote was remarkably small. Many of the newsmen who covered him thought that it did not coincide either with his personal popularity or the acceptance of many of his concepts. It is quite possible that the picture of apostasy he presented was catastrophic.

The tradition of cabinet loyalty to the chief is so strong that when members do leave, their departure is accompanied by a barrage of statements refuting even the suggestion of a break with the president. These assurances come not only from the White House but from the departing cabinet member himself. Regardless of the motivations, the final scene must be one of intense—almost anxious—cordiality, with broad grins and handshakes carefully exaggerated so they will be missed by no camera.

This, of course, does not mean that a cabinet member will deliberately alter his views or lie to a president about his feelings. When a president polls the group, which happens frequently, he will receive brief, concise, carefully worded statements that will establish for the record the secretaries' positions. This is a very useful method for gathering advice on issues where nobody feels very strongly and the only problem is the refinement of methods for reaching predetermined goals. But the issues that really matter—the issues of survival—*do* stir men's emotions and cannot be discussed meaningfully in an atmosphere reminiscent of classroom recitation.

There is no such thing as adversary discussion in a cabinet meeting. Men do not pound the table, contradict each other, challenge contrary opinions. Whatever fire may have been in their bellies when they entered the White House gate has been carefully quenched by the time they reach the Cabinet Room doorsill. What follows is a gentlemanly discourse conducted on an extremely "high" level, and enveloped in the maximum dullness conceivable. And every word is addressed to one man and one man only. A cabinet meeting is not a marketplace of thought where ideas undergo crucial tests. It is, at best, a forum for the presentation of ideas which could just as easily—and perhaps more usefully—be gathered over the telephone or by mail.

In reality, there is nothing else that it can be. The cabinet members have no firm political base. They represent no partisan constituency, in the commonly accepted sense of that term. Their personal politics are totally irrelevant to their official position, except for the rare cases in which they are asked to do some political chores for the head man. They are servants of the president and their loyalties are legitimately to him and to *his* policies rather than to a set of principles which bind together a group of people in the population.

If they owed their public position to another political party or even to an opposition faction within the president's own party, the situation would be quite different. Then they would have a base for challenge, for expressing the kind of dissent that a president should hear on a direct, personal basis if he is to remain in touch with reality. A president may, of course, seek on occasion to placate an opposition by appointing one of its representatives to his cabinet. But this is something that he does according to the dictates of his own judgment and something he can undo by his own choosing. The opposition cannot have such an appointment by right, no matter how significant the size of its popular following.

No president would ever want a cabinet which was anything other than harmonious. Chief executives are human and prefer "discussions" which are never sharper than suggestions on how to improve the tactics of an already determined course of action. By the time an issue reaches a level where it should be considered by men of cabinet status, this is the kind of discussion he needs the least. There should be some body of men with whom he has a working relationship who can be severe and even unpleasant in their criticisms before he takes the final plunge.

Perhaps I am unduly influenced by the many years that I spent working for the Senate. But I do not believe that a cabinet which had a built-in device for adversary relationships would be chaotic. I doubt whether it would bring the country to a standstill except possibly on issues where our people are so divided that action is impossible anyway. Of course, there would have to be some device for dissolving the cabinet when it hit a stalemate, and assembling another group of men to give it the old college try. But other countries have found such devices and they have worked reasonably well.

Perhaps I should revert to the reference to the Senate in the paragraph above. The hierarchs of that body are extremely strong-minded men who do not hesitate to express their opinions of each other in basic English, as long as the *Congressional Record* clerk is not around. Sometimes even the presence of the clerk affords little restraint. Yet they are able to find ways of coalescing rapidly when any real crisis presents itself, and these ways reach not only through all factions but across the center aisle. And for men so well endowed with the qualities of self-esteem, they are usually quite realistic about their problems.

This is not intended to present senators as ideal candidates for the presidency or to assert that the Senate way of doing business is a model for the executive branch. But it is to say that the Senate rarely strays any great distance from political reality and that its members have no real difficulty working together. This is a proposition that will be disputed in Washington, where the all-pervasive nature of the executive branch dominates the lives of most of the inhabitants. But I invite those who have had experience at both ends of Pennsylvania Avenue to ponder my conclusions.

Even more interesting, however, is the fact that senators do *not* play the role of adversary in the presence of the chief executive. This is not because entry into the portals of the White House taps previously unrealized reserves of diffidence. It is simply that they have found it inadvisable to be anything other than respectful. The aura of reverence that surrounds the president when he is in the Mansion is so universal that the slightest hint of criticism automatically labels a man as a colossal lout.

The wise senator, therefore, enters cautiously, dressed in his Sunday best and with a respectful, almost pious, look on his face. He waits to speak until the president has spoken to him and his responses are couched in the same careful language employed by cabinet members. He emerges in the same manner and if, for any reason, he must express a dissent, it is most deferential, almost apologetic. There have been exceptions, of course, but they often end disastrously for the senator. A good example was provided by the late William E. Borah of Idaho, who emerged from a conference with President Roosevelt snorting that his sources of information were superior to those of the White House and that he was quite confident there would be no war in Europe that year. That was just a few months before the Germans marched into Poland.

When a president's influence with the public begins to wane, the situation does change to the extent that the voices on the Senate floor become quite raucous. During an election campaign they will become abusive. But this is still something a president reads in a newspaper or views on TV. This is not of the same order as face-to-face confrontation. When the latter occurs, even the most boorish of senators becomes quite civilized. There is no such thing as a challenge to a president on his home ground.

In truth, there is no such challenge anywhere within the government. Members of the judiciary deal with a president at arm's length—a wise rule whose occasional violation invariably results in unpleasant, and sometimes disastrous, consequences. Some of the regulatory agencies include members who, by law, must be members of an opposition party, but they move in circles as remote from the White House as the judiciary—pretty much for the same reasons. The heads of the independent agencies—such as NASA—are in even less of a position to issue a challenge than their more prestigious colleagues in the cabinet. The "underground opposition" within administrative circles, which inevitably exists as a holdover from the past, can do very little other than to circulate scandalous stories, a practice quite rightly frowned upon but which will persist.

I am well aware that the concept of including opposition within the government itself will not be welcomed by any president or by many administrative officials. It seems messy and inefficient, and there is a tendency to assume that a president should not be burdened with an official family some of whose members may make him uncomfortable.

The answer to the second problem—the extra burdens that a president would have to bear—is that he must bear those burdens anyway. The success of any presidential program depends upon public support. Whatever divisions a president might have to face within the Cabinet Room are divisions he will face when his designs become public. He would be in far better shape if he were compelled to take the opposition into account at the time his proposals were being developed. It would be preferable to abandon a program when quiet discussion disclosed its inability to attain goals (unless there was an educational aspect involved) than to throw it out to the wolves and be surprised when it met defeat. The reality is, of course, that very few programs would be abandoned, but many would be modified into a far more sensible form.

It is amazing how few presidential programs reach Congress in a palatable form. The history of the past thirty-three years has been a rarely broken record of presidential swimming in hot congressional water. President Roosevelt, after the first few years when the country regarded him as a savior, was virtually unable to get the House and Senate to move on a domestic proposal. His place in history was probably saved by World War II. President Truman made a magnificent start in securing passage of vital foreign-policy legislation but spent most of his terms in a kicking, snarling match with Capitol Hill. President Eisenhower left Congress alone as much as possible but even he was saved from endless wrangling only because a subtle Democratic opposition conceived and carried out the tactic of converting his few proposals into vehicles for Democratic legislation. President Kennedy's legislative program was stalled on dead center at the time of his assassination and the only important items that ever reached the White House were a few salvaged by his successor. President Johnson, widely regarded as the genius of the Senate in the twentieth century, shoved a fantastic number of bills down congressional throats. But this was due chiefly to the fact that he, also, looked like a savior after the traumatic shock of the assassination. He ended his term in an atmosphere of rebuff after rebuff, scarcely speaking to his old friends. President Nixon in his early months in office should still have been in the glowing phase of the traditional "honeymoon." Yet he encountered serious trouble on two major proposals—extension of the income-tax surcharge and authority to construct a modified antiballistics missile system. The fact that the struggle began so early is significant.

It is not enough to blame President Truman's and President Johnson's problems on the Korean and Vietnam wars and President Eisenhower's difficulties on lack of experience. There are, in my judgment, far deeper roots to the warfare between two of our major branches of government—warfare that goes beyond the antagonisms foreseen by the founding fathers when they set up a system of divided powers. The answer is that a president does not have available to him methods of gauging the intensity of the opposition—something that any politician must have in order to be successful. He lives in an environment where it is not possible to make valid, intuitive judgments about just how angry people will become and about what must be done to blunt their opposition without losing sight of his objective.

Of course, he finds out soon enough once his proposal becomes public. The legislative liaison staff is quite efficient at determining such things once a message has hit the floor of Congress. By that time, it is too late. The president's positions are solidified. Even slight modifications then appear as an embarrassing retreat and, rather than be humiliated, the project is often dropped.

The master practitioners of the Senate seldom fall into this trap. They live in an atmosphere which will instill some degree of humility into even the most arrogant of men. They walk every day through an adversary atmosphere. They have before them constant reminders of the swift penalties for failure to take into account the strong feelings of other men. They not only receive letters and telephone calls from their constituents but run into them in the corridor daily. Reality is never very far away.

The executive branch of the government cannot, of course, operate at the leisurely pace of the Senate. A legislative body, except in highly unusual circumstances, does not have to hurry. But there should be some way that policy decisions could be made at a top level of government through adversary processes. Time would be lost in making many decisions, but when we look at the immediate past, it is difficult to avoid the thought that more time should be lost and perhaps many of the decisions never made. And a great deal of the time would be made up by moving more quickly to action.

We have become too fearful of the results of disputatious personalities and clashing ideologies. We assume that the political process is a type of warfare in which the leaders are justified in concealing their plans from friend and foe alike and awaiting the psychological moment to strip off the protective covering and open fire. We assume that such tactics lessen the damage from partisan strife. Politics *is* a form of warfare but it is designed to achieve different goals and therefore should be played under different rules. The earlier the differences are brought into the open, the better. Perhaps if we forgot some of our vaunted efficiency, we would score somewhat better in the realm of achievement.

## C. Concerning Proposals To Strengthen Political Parties and To Adopt Procedures for a Vote of No Confidence

## Proposed Constitutional amendment relative to a Congressional vote of no confidence in the President

### H.J. Res. 111[8]

**Joint resolution proposing an amendment to the Constitution of the United States relative to a congressional vote of no confidence in the President**

*Resolved by the House of Representatives and the Senate of the United States of America in Congress assembled (two-thirds of each House concurring therein)*, That, the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"Section 1. Notwithstanding any other provision of this Constitution, Congress may adopt a Resolution of No Confidence in the President. A three-fifths vote of the members of each House present and voting shall be necessary to adopt such a Resolution as a concurrent resolution. A Resolution of No Confidence shall be privileged in the House of Representatives and shall have precedence over all other bills, resolutions and motions in the Senate.

"Sec. 2. In the Resolution of No Confidence, Congress shall fix a date falling not less than ninety days and not more than one hundred and ten days from the date of adoption of the Resolution for the calling of a special election for the choosing of electors for President and Vice President, and of Representatives and Senators: *Provided*, That if the date of adoption occurs on or after June 1 of the second year of the President's term, and at least ninety days prior to the date of the choosing of Representatives in Congress that year, the special election shall coincide with the regular election for the choosing of Representatives. The Clerk of the House of Representatives shall notify the chief executive of each State and of the District of Columbia of the date of the special election, and each State and the District of Columbia shall provide for the choosing of electors, and of Representatives and Senators, on that day. The convening and balloting of electors at a date specified by Congress, and the transmittal of the ballots to Congress which shall count them, shall be in the manner specified in the twelfth and twentieth articles of amendment.

"Sec. 3. If the special election occurs at the regular election for the choosing of Representatives in Congress, the President and Vice President, and the Representatives and Senators, chosen pursuant to the special election shall enter upon their terms of office on January 20 of the year immediately following. In such case, the term of office for the President and Vice President shall be two years; for Representatives, two years; for Senators, six years, or whatever remains of the term of their respective predecessor. If the special election occurs at any other time, Congress in the Resolution of No Confidence shall specify a commencement date not less than sixty and not more than seventy-five days following the date of the election. In such case, the term of office for officeholders shall be whatever remains of the term of their respective predecessor.

"Sec. 4. Notwithstanding the twenty-second article of amendment, the incumbent of the Office of President at the time of adoption of the Resolution of No Confidence shall be eligible to stand for election at the election herein provided for and to serve the term commencing thereafter.

"Sec. 5. The times, places, and manner of holding elections for Presidential electors, and for Representatives and Senators, shall be prescribed in each State by the legislature thereof; but the Cbgnress may at any time make or alter such regulations.

"Sec. 6. Congress shall have power to enforce this article by appropriate legislation."

from Can Representative Government Do the Job,
by Thomas K. Finletter

## CHAPTER XII

## TO COMPLETE THE EVOLUTION

A JOINT EXECUTIVE-LEGISLATIVE CABINET would grow in power with use. Since the two branches are being driven by necessity to work together, any institution or practice whose purpose was to encourage such collaboration would inevitably prosper. The men in the Executive and Congress are constantly seeking ways of working together. If they had an established body expressly set up for the purpose they would use it and earnestly try to make it work. And institutions of government which grow in this customary way have always been the most satisfactory.

On the other hand it is not enough just to set up a common meeting ground. The surroundings in which the experiment would operate—the other institutions and procedures of government which surround it—must be favorable to its growth, or at least not be hostile to it. And there are some parts of the American system today which are so antagonistic to collaboration between Congress and the Executive that they would jeopardize the success of a Joint Cabinet. These forces could not prevent the Cabinet from being a very constructive force, but they could and unless changed would prevent it from fully accomplishing its object. The most important barrier to the success of a Joint Cabinet is the system of fixed dates for elections—the rigid terms of two and six years for Congress and four years for the President.

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In the first place there is the possibility that under the system of fixed terms of office one of the Houses of Congress may be of a different party than the President. This happens often enough to be a menace to our form of government. It has occurred in twenty-seven out of seventy-nine Congresses. In seven, both Houses were opposed to the President; in fourteen the House of Representatives alone was opposed; and in six the Senate. This split in party solidarity usually takes places at the congressional elections in the middle of a presidential term. It has occurred on at least three occasions within recent political history—the mid-term elections of Taft, Wilson, and Hoover.

Whenever a majority of House or Senate is of a different party than the President, the government of the United States cannot function. Of course, under such circumstances, the Joint Executive-Legislative Cabinet would be of practically no value at all. The Cabinet must be composed of members of the same party to be effective. A common meeting ground for a group composed of members of opposing parties would be of no value except on nonpartisan issues—and there would be very few of these.

I have tried to show earlier in this study the chaos that results whenever the President and one of the Houses are of different parties. The last two years of the Taft administration bogged down in conflict because of such a split in party control. The defeat of Wilson's treaty was caused by a similar break in party solidarity; for he lost control of both Houses of Congress in the 1918 election. Wilson was in an even worse predicament than his predecessor, for he needed not a mere majority but a two-thirds vote in the Senate to get his treaty approved. More recently the impotence of the Hoover administration from the 1930 elections on, and the resultant misery which came from the inability of the government to act during those distressing years, was caused in large part by the split in party control and the consequent inability of the President to command any support in Congress.

Rarely has this break in party solidarity happened in a presidential election year. The campaign orators on both sides in the 1944 election were, however, quite right when they pointed with alarm to what would happen if Mr. Roosevelt had gone into his fourth term with a Republican House or if Mr. Dewey as president had had a Democratic Senate. The Democrats had less than one-half of the membership of the 78th Congress as it ended its term on January, 3, 1945. The administration would have been in a serious position if the November elections had not substantially increased the Democratic holdings in the House of the 79th Congress. Even as it is there is always the possibility that in 1946, when the war presumably will be over, the trend will be reversed and the Republicans will make gains in the House which will cut away the Democratic majority and even give control to the Republicans. If that happens, the government will again be in a deadlock—and at what a time! Where will be the smoothly effective power of the United States government to handle international peace and domestic economic security? Must the will of the American people be defeated by a technical defect in their government? Must we wait, under our system of fixed elections, until the next Presidential election comes along before we can have a government which is capable of functioning? Should there not be some method of giving the people a chance to decide whether the present administration is to continue—with the support of a Congress of its own party and backed by a fresh endorsement of the people—or whether the Republican party is to be given a chance to take over the direction of the government?

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But even with the majority of both Houses of the same party as the President, the fixed terms of office would be a great barrier to the proper working of the Joint Cabinet, just as now they make collaboration between the Executive and Congress extremely difficult. The fact that the members of Congress are secure in office until the end of their fixed terms makes them independent of national party control, and therefore to some extent hostile to the President. The fact that both Congressmen and Senators are dependent for re-election more on local machines and local influences than on the national parties increases this sense of independence. Moreover, the fixed elections have made for weak national parties and thus have interfered with the growth of that party discipline which alone in representative government can constitute an effective bridge between the Executive and Congress and alone can bring them to work together harmoniously.

The deadlock between the President and Congress which takes place even when the majority of the House and Senate are of the same party as the President is frequently as serious as that which occurs when there is a break in party control among the Presidency and the two Houses. When the majority in the House or Senate is small, the present relatively slack discipline in Congress encourages the formation of blocs of progressives, insurgents or just independents, who even if they are of the same party as the President do not follow his lead and create a situation equivalent to that which arises when there is an absolute majority against him.

And even in the best of times, when the President has a great majority of both Houses and an apparent mandate from the people to carry out his policies, there is inevitably a time of deadlock as a President's term wears on. The 1936 election was the greatest landslide in American history. The President had enormous majorities in both House and Senate, and yet one of the most crushing defeats Mr. Roosevelt suffered at the hands of Congress—on the Supreme Court proposal—followed soon after this election. The power of even the strongest popular leader, as I have tried to show earlier in the study, wanes rapidly as his administration goes on. The resistance from Congress which the President has to face, once the patronage is expended and the novelty in his leadership has worn off, creates a stoppage in government which is nearly as serious as when the opposing party blocks him by its numerical control of one of the Houses.

Clearly there should be some way of putting an end to such conditions. But there can be none as long as the President, the House and the Senate have fixed terms of service which perpetuate these deadlocks and make it impossible, when Congress and the President get to a point where government cannot function, to refer the issues and disputes to the people for a decision as to how and by whom the country is to be run.

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The remedy is, I believe, to amend the Constitution so as, first, to give to the President the right to dissolve Congress and the Presidency and to call a general election of all three whenever a deadlock arises between Congress and the Joint Cabinet, and, second, to make the terms of the Senate, House, and Presidency of the same length—say six years from the date of each election (whether the election takes place as the result of a dissolution or on the expiration of the full six-year period of service). The second part of this proposal is made necessary by the first. For the main objective of the right of dissolution is to have a homogeneous Congress and Presidency and, for this purpose, to have both Houses and the President elected at the same time. This can be done only by having the fixed terms of all three of the same length.

Usually the President, the House, and the Senate would serve out the six-year term to which they were elected. But if it became clear that relations between the Executive and Congress had reached an impasse which was seriously affecting the interests of the nation, the President could issue an executive order calling for a new election of the entire House, Senate, and Presidency. The results of such an election would be to return to the House, Senate and Presidency men of the same party, committed to the same principles. If, say, a Democratic President called a disssolution, and the policies of the President were supported in the election, the Executive would have a House and Senate committed by a fresh mandate of the people to follow its leadership. If the administration in office were defeated in the election, a Republican President, House, and Senate would come in, committed by the will of the people to carry out different policies. The result in either case would be a unified government, armed with a fresh authority from the people, knowing what the people wanted it to do, and capable of carrying out their wishes.

If such a remedy had been available, many of the distressing periods of our history which were caused by the conflict between Congress and the Executive would have been avoided. Why, for example should the country not have been given the chance to decide in 1919 whether or not it wanted to join the League of Nations instead of having the issue decided with such tragic consequences by bitter fighting between an ill President and a Senate determined to reassert its authority? Why should we not have avoided the confusion of the last two years of the Taft administration by having the people decide the issue between Congress and the President instead of letting the government bog down in conflict? Why did we have to go through the unnecessary misery at the end of the Hoover administration when the government failed utterly in its duty to the people? Why is it necessary to sit down impotently when these deadlocks occur which render "the great Government of the United States helpless and contemptible?" And, looking to the future, if Congress reasserts itself violently when the present war is over and blocks the President in a burst of negation, as it always has in the past after a war, must the people be compelled to sit quietly while their government quarrels within itself, or will some way be given to the people to decide who is to run their government and how? There surely is no reason in political theory or in the practical workings of the United States government which justifies maintaining our fixed elections at such a cost.

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The mere existence of the right of dissolution would break these deadlocks immediately. Whenever the Joint Cabinet could not agree, or whenever Congress refused to follow its leaders in the Joint Cabinet, the possibility of a call for a general election would be there to compel either an immediate agreement between Congress and the Executive or a solution of the dilemma by a reference of the issue to the people.

In practice dissolutions would take place rarely. We need not fear an instability of government like that of the Third French Republic if the President of the United States had the right to dissolve. Comparisons with other forms of government are always unsatisfactory, but the French example is used so often to prove the superior merit of our presidential system that it must be considered. The great weakness of the French system was precisely that of our own, namely, that there was *no* right of the President of the Third Republic or the Premier, the head of the government, to dissolve the Parliament. The right to dissolve existed *de jure* in the French constitutional laws, but since 1877 when Marshal MacMahon dissolved the *Chambre*, dissolution was regarded as tantamount to an attempted *coup d'état* and therefore as unconstitutional. As a result the members of the French Parlement could safely oust the government (the Premier and the members of his cabinet) because there was no penalty attached to doing so. The Premier could not threaten Parlement with a general election where its members would have to justify their defeat of the government to the people. The individualistic tendencies of the members of Parlement were therefore free to run riot, to form splinter parties—analogous to our own congressional blocs—of numerous shades of opinion, and to create an instability of ministries which became notorious. American individualism is not able to do the same thing, for our Congress cannot put the President out of office. Congress takes its individualism out in another way—by blocking the policies which the President proposes. The right of dissolution is as necessary to stop this practice as it was needed to cure the instability of French governments under the Third Republic.

If the President of the United States had the right to dissolve, special elections would be called only if there were a real difference of conviction on matters of major importance between Congress and the Executive, and then only when all attempts to reconcile the difference had failed and the goverment accordingly could no longer function. Surely this would not occur often. The fear that instability would result from the right to dissolve is really a fear that the American people are incapable of governing themselves.

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Agreement in the Joint Cabinet would soon become the custom. Strong forces of self-interest would drive both branches of government in the Joint Cabinet and in Congress to work out an agreed course of action. Acceptance by Congress of the leadership of the Joint Cabinet would become the normal course of action.

In the first place, the members of Congress would not be anxious to risk their seats at a general election. Nor would the President want to give up a fixed term of office by risking a new verdict by the people. There would therefore be a self-interest in Congress and the President driving them to reach agreement. There would also be a greatly increased party discipline within Congress which would make the party ranks in the two Houses responsive to their leaders in the Joint Cabinet and to the President as the head of the party.

Secondly, one of the main reasons why congressional party lines now so often break down and why the members of Congress might not follow the leadership of their representatives in the Joint Cabinet would be removed if the power of dissolution existed. This reason is the excessive power of the organized groups.

The importance of the organized groups can be made clear by taking the course of a bill originated by the Joint Cabinet. If such a bill were broadly national in its character (such as neutrality legislation or most other matters of foreign policy) and therefore did not touch the interests of one of the powerful combinations—such as the farmers, labor, various business groups, Negroes, youth, and the like—the members of Congress would probably follow the recommendation of their leaders in the Joint Cabinet. The congressional members of the Cabinet would know what the prevailing temper of Congress was, and the proposal would have been shaped with this in mind. But if a proposed bill touched seriously the interests of one of the organized groups (say, legislation affecting the parity price of crops or a proposal to modify the National Labor Relations Act or to revise holding company legislation, or any veterans legislation) the situation would be different.

Such a bill would produce a struggle between party discipline in Congress and the power of the groups. If the President did not have the right to dissolve Congress and if one of the groups decided to make an issue of the bill, party discipline would almost certainly break down and the decision go against the recommendation of the Joint Cabinet. Even if there were, say, a Democratic President in office and a Democratic majority in the House and Senate, a powerful organized group would probably, under the present system, take away enough Democratic votes to join with the Republicans to defeat the measure.

On the other hand, if the President had the power of dissolution, the organized groups would be in a much weaker position, and both parties in Congress would be in a better position to resist them. In the first place there would be the greater party discipline to which I have referred which would come from the unwillingness of the members of the two Houses to precipitate a general election—and this they might well do if they yielded to the pressure of the group. In the second place the mere existence of the right of dissolution would make the national parties stronger throughout the country, and thus would give the party leaders in the Joint Cabinet a new and important influence over their members in Congress.

I think it is clear that the possibility of having to handle a general election whenever the President called a dissolution would necessarily make the national parties increase the strength of their organization in the states. The national parties would have to keep themselves ready at all times for an election at an uncertain date and would have to be constantly strong enough to make an all-out effort to win the Presidency and a majority in the House and Senate in order to keep or put their party in control of the federal government. The present relatively greater organization and power of the state machines and of local individuals and groups would diminish. Party control would more and more be exercised by the national organizations. And this strength of the national parties would have its effect on the members of Congress. They would be much more ready to follow their leaders in the Joint Cabinet if they knew that the national party organizations would be stronger at an election than the organized groups and other local interests.

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The strength of the national parties would be greatly increased if the states would modify their residence requirements for congressmen. We will probably never adopt the practice (which would require a constitutional amendment) of allowing the party leaders to assign a congressional candidacy anywhere in the country to a man they want to have in the House. It is to be hoped, however, that the laws of the states will be changed so as to allow a candidate for Congress to run from a district other than that of his residence—but within his state. The only requirement of the Constitution in this regard is that a representative must reside in the state, but state laws or custom usually provide that a candidate for the House shall be a resident of the congressional district from which he runs for office. This necessarily encourages the local loyalties of congressmen against the national viewpoint. It also prevents the party leaders from finding safe seats for those members whom they want to keep in public life. President Roosevelt may lose Hyde Park in the national elections, but on four occasions a wider constituency has kept him in office. A Congressman, however, who has voted consistently to support his party leaders in the Joint Cabinet may be retired to private life under the present system because of purely local considerations (the organized groups again), despite the efforts of the national party leaders to keep him in office. This is less true in the Senate because of its wider constituency. If state laws were changed so as to give the party leaders the power to keep their strong men in the House, the power of the national parties and the discipline of their membership would be greatly helped, and the Joint Cabinet would thereby be made more effective.

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The national parties should be the force in this country which holds down the organized groups to their proper functions. They should be the link between the Executive and Congress which enables the government to work in the national interest and against the pressures of local interests, organized or not.

It will not be denied that at present our national parties are weak both in party discipline in Congress and in supporting their candidates for the Senate and House when they come up for election. The national parties now have served their purpose when they have directed every four years the campaign for the Presidency. At these times the national parties act as the co-ordinators of the state machines for this one election. They then go into suspended animation until the next presidential campaign, and during the interval they have little influence in maintaining party discipline in Congress and slight power in the mid-term elections for the House and Senate.

The organized groups take full advantage of this weakness of the parties. The lack of support from the national organizations drives the members of Congress to look not to the national parties but to the local machines and the politically powerful individuals and groups in their states. Obviously under these conditions the parties are not in a strong position to command support in Congress for a national point of view against the pressures of the local groups.

Of course there are exceptions, where a member of Congress achieves a national reputation which enables him to be free, in a greater or less degree, of local pressures. The constituencies become proud of these men, and will not stand for some local group attempting to oust them from office. Senators Henry Cabot Lodge, Sr., Borah, and George Norris were such men. There are many like them in the present Congress. Senators Connally, George, Austin, Fulbright, Vandenberg, LaFollette, Barkley, Brewster, Wagner, Taft, Glass, and Byrd, and Representatives Martin, Bloom and Wadsworth—to mention only a few—have achieved reputations that go far beyond their constituencies. The late Huey Long was reaching a power when he was killed which definitely transcended Louisiana; and former Representatives Hamilton Fish and Dies stood for principles which, whether they were admirable or not, were not parochial.

But these are the exceptions. The influences which decide the political fate of the members of Congress are usually local. Woodrow Wilson's appeal for a Democratic Congress in the 1918 elections and Mr. Roosevelt's attempted purge of the Democratic party in 1938 show how low the influence of the national organizations is on the futures of the members of Congress.

However, if the right of dissolution existed, this emphasis on local issues would largely disappear. The power of the groups lies mainly in their long memories. At present when a congressman or a senator comes up for re-election his record of voting on national issues is a stale matter. It will have little influence on the election, compared to the tenacious memory of an organized group whom he may have offended by his voting record. But if there were the right of dissolution, the voting would be on live issues in which the people would be immediately interested and on which they would make their voice heard. No longer would the undue influence of minorities decide the issue.

If, for example, the Joint Cabinet had decided on a measure which was opposed by the railroads and on another which offended organized labor, the dissolution would be called with specific reference to those two issues. There would be debate all over the country on the merits or demerits of the policies which the Joint Cabinet had recommended. The organized groups would of course give their views, but the President and the Joint Cabinet would also be heard. There would be a full debate, and the decision of the people would be made with knowledge of both sides of the question, the national point of view as well as the special one of the groups. Obviously the power of the groups would suffer under such a procedure. And equally clearly, their influence on the votes of members of Congress would diminish correspondingly. We would more nearly approach that supremacy of the national interest which Burke proclaimed to the electors of Bristol:

> My worthy colleague says, his will ought to be subservient to yours. If that be all, the thing is innocent. If government were a matter of will upon any side, yours, without question, ought to be superior. But government and legislation are matters of reason and judgment, and not of inclination; and what sort of reason is that in which the determination precedes the discussion; in which one set of men deliberate, and another decide; and where those who form the conclusion are perhaps three hundred miles distant from those who hear the arguments? . . . Parliament is not a *congress* of ambassadors from different and hostile interests; which interests each must maintain, as an agent and advocate, against other agents and advocates; but Parliament is a *deliberative* assembly of *one* nation, with *one* interest, that of the whole; where, not local purposes, not local prejudices, ought to guide, but the general good, resulting from the general reason of the whole. You choose a member indeed; but when you have chosen him, he is not a member of Bristol, but he is a member of *parliament*. If the local constituent should have an interest, or should form an hasty opinion, evidently opposite to the real good of the rest of the community, the member for that place ought to be as far, as any other, from any endeavor to give it effect.

This is not to say that the power of the organized groups would disappear entirely if the right of dissolution existed. But it is to say that their power would be greatly cut, and that they would be held much more closely to their proper functions than they are now. Many organized groups have an entirely proper place in a democracy; for the rights of assembly and petition have an honorable place among the natural rights—provided that they do not go beyond the open use of persuasion, do not use improper methods, and do not destroy some other right, such as that of the people to a deliberative representative body acting in the interests of the people as a whole. It is only when these groups use wrongful means or get a power out of relation to the social interests they represent that they are evil; and unquestionably many of them are in that category. Strong national parties are an antidote for these overpowerful organizations. In countries where the national parties are strong, organized groups have never obtained an undue power. For the excessive power of organized minorities arises only when there is an inadequate representation of the national interest.

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It has been suggested that this weakness of the national parties is about to change, not because of any new technique of government but because national parties, it is said, are about to grow up which will have definite and divergent social beliefs and accordingly a solidarity in discipline which will be strong enough to overcome the power of the organized groups.[1] Presumably, according to this view, the two great American parties, or possibly some other parties taking their place, will diverge—one becoming much more conservative than at present, the other more advanced. Having thus definite characters and much more clear ideologies than now, they will develop discipline (parties with creeds develop solidarity more than those without them) and, acting in teamwork with the man they have elected to the Presidency, will control Congress and drive the organized groups from power.

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[1] Harold J. Laski, *The American Presidency* (1940).

This is a misconception of the American political scene. We will not have parties with divergent social creeds as long as we have our present form of government.

With our system of choosing the President as well as Congress by a direct popular vote, the two national parties will always tend toward identical social beliefs. There is at the time of every election a prevailing public opinion around which 51 per cent of the votes are clustered. Any party which strays far from this public opinion will lose the election. A third party with a new philosophy—Barnburners, Locofocos, Socialist, American Labor, Liberal, or any other—cannot survive unless it displaces one of the existing majority parties. The issue of survival is decided in the nation-wide elections when a party needs 51 per cent in order to live. There may be different guesses by the party managers as to the prevailing public opinion, but they will be agreed on one thing and that is to get as close to it as possible. Mr. Sidney Hillman recognized this truism when he stated recently that the CIO Political Action Committee was not a political party, had no intention of becoming one and proposed to restrict itself to nonpartisan action—that is, throwing the weight of the CIO committee for the Republicans or the Democrats as best suited the interests of the CIO, but never attempting to compete with them on equal terms as a party.

It has been suggested that there is a difference between the Republican and Democratic parties in that the Democrats have been the party of reform and of strong popular-leader presidents, while the Republicans have leaned toward congressional supremacy and more orthodox social views. It is a fact that the great peacetime popular leaders —Jefferson, Jackson, Wilson and Franklin Roosevelt— have been Democrats. And an unsuccessful leader of the Democratic party, William Jennings Bryan, could appropriately be added to this list even though he never achieved the Presidency. There have been surprisingly few exceptions to this pattern. Cleveland's regard for the separation of powers was one instance which does not fit exactly, but Lincoln cannot be regarded as an example to the contrary since he was a wartime president who was driven to the use of executive power contrary to the traditions of his party at the time. Theodore Roosevelt might appear not to fit the theory; but he is explained on the ground that he was not the choice of his party for the Presidency but was given the nomination as Vice President in order to eliminate him from the New York political scene.[2]

Any tendency of the two parties towards these divergent social views, however, if it exists, is held well in check by the party managers. There can be no pronounced ideological difference between the two parties without a sectionalism or class solidarity much greater than exists at present in the United States. Such sectionalism as exists in the Solid South and in some of the northern states does not decide the national election; it merely drives the contending parties into the deciding battleground of the other states. And any tendency toward class solidarity is constantly frustrated by the moves of the party managers, who keep their policies so close to those of the other party that class voting cannot develop. Both parties have to bid for a majority of the votes in a large number of states and therefore cannot do otherwise than direct their party planks at the point which they believe will please the majority in those areas. As long as that necessity obtains—and it will do so as long as the President is elected by direct popular vote—there will be no substantial difference in social theory of the two dominant national parties.

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[2] W. E. Binkley, *The Powers of the President* (1935).

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It is sometimes said that a country like the United States which has no sharply marked class distinctions cannot support a system of government which allows general elections to be called at any time. This is another way of stating Professor Laski's thesis that economic or class solidarity is needed to make the national parties strong in order that they, through their discipline, may make the government orderly. But in fact there is no such class control of the parties in England. Lord Balfour has said that the British "political machinery pre-supposes a people so fundamentally at one that they can safely afford to bicker, and so sure of their own moderation that they are not dangerously disturbed by the never-ending din of political conflict." Thus, during the heyday of the British system the parties had no clear-cut class distinctions, and even though today the Labour Party has a trade union base, it and the Conservative Party have to and do keep very close together in their policies for the same reason that our parties do. Party discipline grows when there is a need for it, and when the technical structure of the government is favorable to it. In the United States we now need strong parties, and the right of dissolution would be the technique which would enable us to have them.

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Another reason given for the lack of strong national parties in this country is its geographical size and large population. This explanation is unsatisfactory. Measured by the ability to get from one place to another, to communicate in writing or by voice, and by rapidity in the distribution of news, the United States is smaller today than it was in the early nineteenth century. The radio is now making the country even smaller. No longer can the politicians tell the people one thing in one place and another in another. The radio reports to the whole people. The size of the country and its population is not the reason for the weakness of the national parties.

What in fact makes for the lack of strong national parties in the United States is that there is no need for them under our present system of government.

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The power of dissolution would remove another fundamental cause of the deadlocks between Congress and the Executive. This cause is the compelling necessity, to which I have referred, for Congress to defeat the President in order to maintain its place in the American system. When Congress is confronted by a strong President, secure in his four-year term of office, it has no alternative, if it is not to become permanently subservient, except to show by repeated defeats of the President's proposals that it has not become a rubber stamp but is an independent, equal branch of government.

Congress cannot, however, block the President completely (except during the last year of an administration when relief may be in sight in the form of a new Presidency) by refusing to enact any of his proposals or by using its huge appropriating power to cripple the executive branch. The people would not stand for a stoppage in their government. Congress therefore blocks the President partially—but effectively enough to make proper policy-making impossible—by a series of nagging checks.

The history of our presidents who have tried to dominate Congress shows that these congressional defeats of administration policies increase as the President's term wears on. The experience of Presidents Theodore Roosevelt, Woodrow Wilson and Franklin D. Roosevelt was that the blocking process began in the middle of the first term. In the case of Theodore Roosevelt, it reached a climax at the end of his administration, when in the election year of 1908 there was no presidential leadership at all. In Wilson's case congressional resurgence was interrupted by the war phase, but was taken up again—very effectively—when the war was over. In the Presidency of Franklin Roosevelt the peacetime leadership has declined steadily under the persistent reassertion of congressional supremacy, except when the conflict was called off for the purposes of the war.

No private enterprise could survive under such a system. In a private business the principal (Congress) would allow the agent (the Executive) full freedom within the scope of his authority. The principal would keep himself informed of the acts of the agent, would require him to report from time to time and would insist that large commitments be approved by the principal. If the agent acted contrary to the wishes of the principal, or made proposals which seemed unwise, or if the principal lost confidence in the agent, the relationship would stop. The agent would be dismissed and a new one retained or the business would be given up. The principal would not annoy the agent with detailed instructions at every turn, he would not reject the proposals of his agent repeatedly and still keep him in his employ, and above all he would not quarrel with him. The principal has one big check—the right to hire and fire. Until he uses that power the agent is left alone to do the work he has been hired to do.

These repeated nagging checks of the Executive by Congress would not be necessary if the President had the power of dissolution. For in that case Congress would have one big check which would give it a sense of security and would make it feel free to accept the leadership of its representatives in the Joint Cabinet as long as it had confidence in its leaders and the measures they proposed.

The big check that Congress would have would be the right to force the President to call a dissolution. For if the President had this right, Congress could block the Executive completely by refusing to enact any of the proposals of the Joint Cabinet. It could give a vote of lack of confidence, and the people would sanction this drastic step because the President would have the remedy immediately available of calling a general election which would put the whole matter under dispute up to the people for decision.

The right to call a dissolution would thus in practice belong to Congress as well as the President. No President could refuse to order a general election if Congress made up its majority mind that it disapproved of the Executive's leadership and wished the matter referred to the people for a decision. It would of course be possible to provide by constitutional amendment that a dissolution could be called only on a vote of the Joint Cabinet, or on the demand of the President and the vote of both Houses. But this would only incorporate formally in the Constitution what would necessarily be the unwritten practice.

With the self-assurance which would come from this great latent power of forcing a dissolution, Congress would feel compelled to reject the leadership of the Joint Cabinet only when it believed that the decisions of the Cabinet were not in the national interest or were contrary to the wishes of the people. No longer would Congress be compelled to defeat the Executive just to maintain its right of existence in the American system.

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Strong national parties able to support their candidates at the elections to the House, Senate, and Presidency would constitute the link between the Executive and Congress which would fuse them into a team working in the national interest and powerful enough through their union to defend that interest against the forces of sectional and functional localism. Only through the force of party solidarity can the competition between Executive and Legislature, which is the basic condition in all representative governments, be converted into a system where each branch has its proper and well defined duties and where these duties are pulled together into a common constructive effort. With the party solidarity that would come from the right of dissolution, the majority party—those whom the people had chosen to run their government for the time being—would have a cohesive organization in the White House and in Congress capable of carrying out the policies for which the party stood. They would govern in the full light of day, with the duty of debating their plans and deeds before a legislature fully informed of what they were doing and itself organized on the one side to support and on the other to scrutinize and attack their work.

The members of the majority in the House and Senate would respond to the discipline of their party, but only as long as the party itself responded to the wishes of the people. The opposition party also would be organized. And above all it would be responsible. If it defeated the majority by making converts, it would have to defend its action before the people. And it might have to assume power and put its critical theories into practice. Its opposition would therefore no longer be indiscriminate, as it now so often is.

Responsibility—blame or credit—could be fixed. Now the people do not know whom to hold liable for a failure of national policy—Congress, the President, the majority, the minority, the blocs, or the organized groups. With the majority party taking clear responsibility for its action, and an organized opposition responsible for its criticism, the people could determine intelligently whom to censure and whom to support. Government thus would not only be more orderly and positive; it would be more responsive to the will of the people.

The power of dissolution is the crucial technique without which we will never have a powerful Executive working in harmony with a powerful Congress.[8]

from Presidential Power & Accountability: Toward A New Constitution, by Charles M. Hardin

# Introduction
# The Crisis and Its Cure

When a nation has cause for political philosophy, nothing can stop it from producing it, and the cue to its absence from America lies in the absence of a cause.—*Louis Hartz*

In 1973 America was gripped by its gravest political crisis since the Civil War. The president all too often was out of control. Unbridled bureaucracies acted with the arrogance befitting their autonomy. Many pressure groups exercised appalling political leverage. Increasingly disorganized, the public felt deceived and disillusioned. The threat of an inquisitorial government's espionage—and even of armed attacks by its minions, regardless of constitutional guarantees—was in the air. A former high official of the Nixon White House, asked by a Senate Watergate Committee member what advice he would give young people inquiring about careers in government, replied—"Stay away!" The audience rocked with cynical laughter. The heritage of Washington, Jefferson, and Lincoln—so long miraculously intact—was crumbling to dust.

A sense of the need for fundamental changes was abroad. Recent presidents—Eisenhower, Kennedy, and Lyndon B. Johnson—had considered and some had urged basic constitutional reforms. In 1973 Richard M. Nixon endorsed a single six-year term for presidents coupled with a four-year term for congressmen. Ironically, his suggestion coincided with the most serious discussion of presidential impeachment since Andrew Johnson. The thought of impeachment made many persons shudder. And yet there was the haunting nightmare of a discredited president continuing in office for forty months. Senator Edward M. Kennedy and ABC commentator Howard K. Smith pointed out that the parliamentary system would enable the displacement of a politically disabled president by political means and for political reasons—a great improvement over impeachment. Clark Clifford, formerly special counsel to President Truman and Secretary of Defense under President Johnson, called for the president and vice-president to resign pursuant to the Twenty-fifth Amendment. Among those who denounced Clifford was Arthur H. Dean, formerly negotiator at Panmunjom for the United States and sixteen other nations, American ambassador to South Korea, and holder of many other distinguished assignments. But all that was in the summer; by November 1973 Vice-President Spiro T. Agnew had resigned, the House of Representatives was inquiring through its Committee on the Judiciary into the evidence for impeaching the president, and the chorus of voices calling for the president to resign had swelled while those opposing resignation had fallen virtually silent.

In this period a number of people, including CBS commentator Eric Sevareid, urged Congress to reassert itself, forgetting that Congress had repeatedly proven unable to provide the concerted leadership required by the times. Former Senator Eugene McCarthy advocated "depersonalizing" the presidency in order to free the energies, "intellectual, spiritual, and moral," of the people. In reality what emerged from the people was a collective sense of the inevitable and virtually ubiquitous crookedness of politicians.

In this situation, two facts were of first importance. First, the crisis of 1973 had been foreshadowed. Presidential abuse of power, though seriously worsened, had been visible for decades; the inadequacy of Congress to provide an alternative to presidential government had been shown from the close of the Civil War to the end of the nineteenth century and fitfully demonstrated again thereafter; and the malaise of public opinion had appeared in the late 1960s. In other words, the problems were long-standing and were rooted in structural faults; they were not associated with one administration and one series of events. Second, there was—there is—a way out, painful, difficult, and dangerous as it may be. It will require constitutional surgery at least as severe as that of 1787. The end result can be briefly stated as "Presidential Power and Accountability" or, to put it another way, as presidential leadership and party government.

It will be useful to set forth the diagnosis and the prescription in an outline:

1. A foremost requirement of a great power is strong executive leadership. The political demand for it, manifest world-wide, arises from the present condition of international relationships, given the state of the military arts; from the inexorable need to develop and use

science to maintain national security; and from the nature of modern economic and social organization especially when coupled with emergent ecological considerations.

2. America met the first requirement by its presidency; but in recent decades the presidency has escaped the political controls essential to constitutional, i.e., *limited,* government. New controls must be found.

3. The search for controls is complicated by the danger that curbs may diminish the effectiveness of the presidency. The executive needs energy today at least as much as in the critical years immediately following 1787 when the Framers concluded that it should be wielded by a single pair of hands to achieve the "Decision, activity, secrecy [yes, secrecy!], and despatch" essential in safeguarding the Republic. How to maintain the full force and effect of the presidency and yet to restrain those presidential excesses so generously demonstrated in this century?

4. The beginning of the answer lies in the relationship between the president and the people. The controlling principle has been *vox populi, vox dei.* The voice of the people is the voice of God. This has been the major premise of our theory of representation; for the people cannot govern, and the president has become their surrogate. Accordingly, he personifies their political authority. When he speaks *ex cathedra* from atop his pyramid of forty million votes, with the bulk of the populace reportedly behind him, he is awe-inspiring. His infallibility especially impresses those closest to him whose approval if not their adulation convinces him that he is larger than life. And yet all this authority may dissolve if the public turns against him. The people's choice becomes the people's curse. We have seen it happen four times in this century. The results of an abrupt decline in presidential power are often unfortunate and may be disastrous.

5. It follows (although the logic may be clear only after further reading and reflection) that a measure of control over the president can be provided by subjecting him to the criticism of an organized, focused opposition with leadership centered in one person who will be continuously visible and vocal as the alternative to the president. As the presidency is unified, so should the opposition be unified. As the president speaks with a single voice, so should he be answered by a single voice instead of a clamor of discordant and little-known voices

in a legislative body whose present genius is the dispersion of power. If a focused opposition can be achieved, the crucial relationship between the public and its government will begin to change.

6. To establish an opposition we must turn to Congress, and the first step is to contradict the myth that the end of providing greater controls over the president without unduly undermining his power may be accomplished merely by increasing the weight of Congress. When powers are separated they are ordinarily less shared than displaced. Either power resides in the presidency with some congressional criticism and subject to some bargaining or it shifts to the bureaucracy, defined as comprising a conglomerate of power among agencies, strategic congressmen, and interest groups. It must be understood that the genius of Congress is opposite to that of the presidency. Where the presidency comes to life in the unification of power, Congress disperses power among a hundred leaders each with his own base in seniority and in sectional jurisdiction (over taxation, finance, transportation, military, labor, and judiciary or whatever). It appears to be impossible to organize in Congress a concentration of power sufficient to provide an orchestrated and programmatic opposition—let alone a centralized executive government.

7. The nature of Congress is strongly influenced by the manner of its selection—staggered terms for senators, two-year terms for representatives. As with the president, this situation induces a particular relationship between Congress and the public. Where the president is elected as the nonpareil, the father, the leader, the magic helper, the incarnation of the infallible goodness and wisdom of the people, congressmen and senators tend to be chosen as a means of assuring their constituents' shares of the national largesse. Henry Adams cynically wrote, "A Congressman is like a hog. You have to kick him in the snout." The grain of truth in his statement exists by virtue of the congressman's expression of the sacred demands of the public. The voter's political obligation in electing congressmen is held to be exhausted when he communicates his wants to government. The voter has no share in the responsibility of government. Indeed, the "responsible electorate" has been authoritatively defined as one that knows on which side its bread is buttered.[1] The logical outcome for public opinion is that Congress "as a whole" is despised because congressmen are generally seen as serving the interests of others—but individual con-

gressmen are typically admired and appreciated by the active and knowledgeable among their constituents.

8. The first reform then must strike at the relationships not only between president and Congress but also between both and the public. The president and Congress should be elected for simultaneous four-year terms. In addition, the defeated candidate for the presidency should have a seat in the House of Representatives, priority in committees and on the floor, and a staff, offices, and other prerequisites suitable to his position as the leader of the opposition.

9. Candidates for Congress of both parties, including a generous slate of candidates running at large on a national ticket, should constitute the nominating conventions for presidential candidates so that when people vote or otherwise share in nominations of congressmen they know that they are also naming those who will nominate for the presidency. The office of vice-president should be abolished. Other reforms will be explained in the last chapter—especially the steps to reduce the political leverage of the Senate; the introduction of national at-large candidates in a manner that will ensure the winning presidential candidate a working majority in the House of Representatives; and the provision that the minority party in Congress may remove the defeated presidential candidate as leader of the opposition but that it must replace him with another leader.

10. These changes should give the voters a new sense of their function and of their relationship to government. They will be able to realize a political responsibility that the present constitution denies them, namely, that they share in the selection of a government—or, equally important, of an opposition. This action is rich in significance. *First,* it will cause a salutary change in a basic premise of American political thought. Implicit in the new electoral system is the realization that government—far from being "the greatest of all reflections on human nature"—is a necessity if people are to dwell, as they must as human beings, in communities. *Second,* these changes will give voters the experience that will vindicate an improved theory of representation. Instead of perpetuating the myth that people in general are in position and sufficiently informed to make all political decisions—the idea of the General Will and of the initiative and referendum dear to the Progressives—the new assumption will be in accordance with a sensible division of political labor: the people will elect a government

—and an opposition—and hold them accountable, the one for governing, the other for systematically criticizing government during its term in office. A workable theory of representative democracy should emerge. *Third,* an extremely significant step will be taken to restore political controls over the president without diminishing his essential power. He would be seen as the necessary and legitimate leader for a given period rather than as the personification of the deity domiciled in the collective breast of the populace. Instead of governmental decisions resting on the ultimate sanction of the popular will, they would rest on a majority, a sufficiently legitimizing concept, but one that takes into account the fact that nearly half the people will consider the president to be politically fallible—and one that will prevail merely for the good and democratic reason that in a civilized community there must be some way other than violence to settle disputes. Control over the president derived from these propositions will be enhanced by the presence of the leader of the opposition and the alternative government that he heads. The tendency for the instincts, the whims, the idiosyncrasies, or the mind-sets of presidents to become manifest in dangerous initiatives should be greatly reduced. *Fourth,* the sovereign right of the majority to choose a government that, on balance, it considers more favorable to its interests would not be denied; but the emphasis would be placed, where it should be if the public is to have a practicable and active share in the awful responsibility of modern government, on the choice of who shall rule. *Fifth,* the divisions in the campaign should persist during the period of governance, subject, of course, to accretion and erosion of political parties "like a ball of sticky popcorn;"[2] and this quality of persistence, along with previous characteristics of the new public, will further rationalize the relationship of the people to their government.

11. The new framework of government will increase the ability of politicians to bring bureaucracy as it has crystallized in America under control. And the balance of power between public government and private groups, which is unfortunately tipped toward private groups in the traditional polity of America, will be redressed.

12. Beyond these considerations looms the inability of the American system to replace a president who has become politically discredited. Impeachment is inadequate. The fault of impeachment for removing presidents lies essentially in its juridical character, its legal procedures, its indictments and its trial according to the rules of evi-

dence, to ascertain the *individual's* criminal guilt or innocence. But emphasis on the *legal* criminality of *individuals* hides and even denies the *political* responsibility that must be *collective*. In the modern age the intricate and complex problems of government require a collegial approach (as the current political argot recognizes—the White House team, the task forces, the national security council, the domestic council, the presidential game plan). Political adequacy is judged not by weighing individual guilt or innocence according to the rules of evidence but rather by political procedures for testing confidence in the prudence and judgment of government. Legal guilt by association is anathema; political liability by association is essential. The political process should be capable of registering the collective judgment of responsible politicians—who, in turn, are informed by their sense of public opinion—on the prudence and wisdom of governments. The legality of a president's acts may figure in such judgments, but more important are decisions on presidential prudence, grasp of events, will, wisdom, and self-control.

The reforms proposed will not in themselves provide a vote of confidence, but they will create the setting in which such votes should naturally evolve. For an essential assumption would be that a president needs a majority in the House of Representatives to govern. If he loses the majority he will be incapacitated and it would be logical for him to resign. It will be argued that the experience of parliamentary regimes shows governments to be extremely durable: prime ministers no longer get ousted because they lose majorities. And yet prime ministers do resign because they have to retain the leadership at least of their own party; and there are ways short of defection in which party members can convey to the prime minister their loss of confidence.

13. Replacement of the president by an adverse vote of confidence —or by so obvious a disintegration in the loyalty of his supporters that he feels compelled to resign—should make way for another evolutionary step, namely, dissolving government and holding new elections. Once this step is taken, it is hoped, it will become the normal way that one government ends and another is chosen. When this happens, the endless nominating and electoral campaigns will be compressed into a few weeks. One benefit will be the reduction of the cost of campaigns and of the leverage of money in politics. Stringent laws on campaign financing will become enforceable.

14. Finally, there is the promise of more honest politics and less

corruptible politicians. This result will come from the collegial responsibility of party government toward which all the reforms suggested above will work. The inherited American system puts all stress on the individual. He can keep himself clean, untainted by the sordid acts of the grafters who surround him, each of whom may profit individually from his crimes—but also may be apprehended, convicted, and sentenced. In the new system members of a government will understand that, just as they govern collectively, so they will be judged collectively for the shortcomings of their colleagues. Party government will provide strong incentives for obedience to a code of political ethics.

# 1 The Constitutional Potential of Party Government

. . . we must never forget . . . that it is a constitution we are expounding.—*John Marshall*

A dangerous initiative has been vested in the president of the United States. Sweeping powers given him by the Constitution and by Supreme Court decisions and enlarged by his predecessors enable him to take the first crucial steps in foreign affairs. He can recognize foreign governments or withdraw recognition. He can make agreements with the force of treaties that pledge the honor, blood, and treasure of this country to protect any or all nations from foreign aggression or domestic subversion, however conveniently defined. The country's military might is his to dispose, without limits, in fulfilling his initiative.[1] His power to act domestically against the law and even to disregard the guarantees of the Bill of Rights was asserted in 1973 to be plenary, so long as he claims to act against a foreign threat, however remote, to the security of the United States.[2] "Initiative" is the right word because, once a course of action is undertaken and an organization created to carry it out, presidential control may disappear in bureaucratic independence or be lost in the labyrinth of government.

The national blindness to the dangers of presidential initiative stems from the narcissism that colors the appraisals of our own political genius. Then, too, the fault looms starkly only with vast and recent changes in the nature and distribution of world political power. Recognition has to contend with the eloquent teaching that, with all his fierce aspect, the president in domestic politics has often only the power to persuade.[3] Even more fundamentally, we have learned repeatedly that the safety of the Republic depends on a presidency capable of "Decision, activity, secrecy, and despatch."[4] Mainly this lesson has been manifest in the deeds of incumbents—"men . . . of the sort of action that makes for enlightenment";[5] but its wisdom has often been underlined by commentators.[6]

Nevertheless, the broad international commitments begun under President Truman, greatly expanded by President Eisenhower, and further increased by subsequent presidents have awakened the nation to the astounding reach of presidential initiative in foreign and military affairs.[7] It was widely believed in the early 1970s that foreign reverses, national budgetary and economic problems, the decline of morale in the armed forces, and much domestic divisiveness were rooted in an excess of armed intervention abroad.

Cry now that "The president is out of control!" and the response—from many, at least—is "Yes!" But it is not enough to cry out. To prescribe correctives requires an understanding of what is meant by loss of control as well as a wariness of overreaction in light of the demonstrated value to the nation of a unified and vigorous presidency. The answer to both problems—maintenance of presidential leadership *and* its control—lies in party government. Moreover, continuation of a strong presidency in an evolving government organized by centralized, disciplined, and competing parties will help to cope with a series of other problems. These are bureaucracy-out-of-control, insufficient coherence in public policy, excessive vulnerability to group pressures, and the travail of public opinion.

## The Nature of Party Government

Party government? *Party government!* To some these are fighting words, to some a rallying slogan, to some an invitation to exhume a horse only too happily deceased; but to most people the words must be simply perplexing. What do you mean? Isn't that what we have now? A two-party system?

The answer is that party government would build on the two major parties, but they would become more than (as they are now) aggregations of voters and interests to win elections. They would be the agencies of majority government—and of minority opposition. They would concert policies for enactment; and they would unite the government to ensure that the policies would be accepted and carried out by the bureaucracy.

In order to do these things, parties will have to change fundamentally. The first question to ask if one wants to understand where power lies in parties is: Who makes nominations? If they are going to shape policies, national parties must have final control over the votes of legislative members; therefore, they must have a veto over the nominations of congressmen and senators in order to exclude those who refuse to conform to the parties' stands on policies. This would not mean the end of bargaining and compromise but rather their transfer, at least in the conclusive stages of policy formation, to the party caucuses. The present degree of influence of congressional committees, and of the interests associated with them, would be sharply cut.

But party government means more than this. The aim of the proposal is to create political conditions to enable the national community that exists in the hearts of the people to emerge. We have been somberly told of a "massive erosion of the trust the American people have in their Government."[8] Since ours is a government of, by, and for the people, this may amount to a loss of confidence in ourselves as a nation. America begins to unravel into its constituent groups. The "mystic cords of memory" that have enabled the tribes, clans, and interests to live together are replaced by envy, contempt, and hatred. All this is encouraged by the nature of certain of our political institutions as well as by the theories that explain and justify their operation. Against these trends we must be prepared to assert that we live not just in groups but in communities and above all in the national community, "the one club to which we all belong,"[9] which must be the primary theater for achieving the noble purposes set forth in the preamble of the Constitution of the United States.

But if there is the Scylla of group solipsism,* there is also the Charybdis of consensus. Consensus holds that sweet reason will so illuminate all issues that the wise and honest will invariably recognize the true anwers. Anyone who refuses agreement is either a fool or a knave. Consensus has a powerful hold on our thoughts: it is, for example, the rationale of a bipartisanship that, despite its acclaim, has often had mischievous effects. And the rationale carries over to create an establishmentarian mentality, with the result that disastrous poli-

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*Solipsism is the theory that the self can know nothing but its own modifications and that the self is the only existent thing. We have only to substitute *group* for *self* to understand one of the grevious ills of American politics.

cies may go unchallenged for a generation simply because the "wise and the good" agree that they are right.[10]

Just as it collects the forces that degenerate into group solipsism in order to rebuild the community, so also party government breaks the stranglehold of consensus. It does so by insisting that—except for the nucleus of self-evident truths enshrined in the Declaration of Independence and the guarantees set forth in the Bill of Rights—political conclusions are provisional, contingent on conditions, and affected by group and partisan interests. To bring this fact to life the Constitution engraved on the hearts of men must recognize the function of the opposition that contending parties will incorporate as an indispensable part of government.

And finally party government will give the citizen his due share in both political power *and* responsibility. It will do so by giving him a recognizable, understandable role in the awesome task of creating a government—or an opposition. It will end the present malaise of public opinion that results from the fiction that each citizen is the sovereign arbiter of all issues—and the fact that each is caught in a political labyrinth that frustrates his efforts and stultifies his thought.

Thus the words "presidential leadership and party government" raise the most important secular questions of our time. Discussion must be thorough, detailed, and, at times, complex. Analysis must produce enough evidence to engage the reader's most serious consideration.

And now to return to the bill of particulars, which will be elaborated in following chapters.

## The Lack of Presidential Debate

The president stands on an incomparable political pinnacle. Only he is elected nationally. We, the people, choose him to run our more perfect union. In our government of, by, and for the people, he alone is elevated by the support of forty million. No one else can rival him. His opponent, the only other person in the country who can speak from atop a comparable monument of votes, is in political discard. Nor is there a forum, unless it is an academic "forum of history," in which the president can be challenged effectively. There is no hall, no house, no court, no consecrated room in which the president can be confronted by a rival mounted on his own separate political base and with his own men rallied around to cheer *his* attack. No one can call the president to account and force him to explain his actions.

In consequence—and to a degree that is both disquieting and astounding—the president's whim controls, or his impulses and idiosyncrasies may be decisive. Surrounded as he is by able men, they are still *his* men. Blocked though he may be in domestic matters and controlled in foreign affairs by outside forces, including those he and his predecessors have helped to set in motion, still he is served by men who are conditioned and even constrained to agree, to acclaim, and to applaud—but not to argue. They are creatures of his appointment and dismissal. They compete for his favor and are subject to the relentless appeal of loyalty. They are awed by the man and the institution.[11]

The country needs to change some things about its government. It needs a forum where the president must come to explain his actions under the critical examination of political rivals intent on replacing him. It needs an opposition capable of countering the major themes of the administration—and not simply a number of congressional obstacles each manned by an insider who can be bought off. It needs an institutionalized opportunity for an alternate leader to exclaim, "I beseeech you, in the bowels of Christ, think it possible that you may be mistaken."[12] No staff system, nor all the essence of ivied wisdom multiplied by the craft of Wall Street, can satisfy the need for *political* confrontation.

What-might-be is party government. It is a government of national political parties whose leaders choose *their* leader—choose him and can, in an extreme situation, depose him. A ruling party, legitimized by a majority of votes, is needed; but the degree of excellence would be insufficient unless a second party, capable of commanding a majority itself someday, is incorporated in the same governmental institution and empowered to counterpose its own leader in the ultimate debate.

The vaunted advisory system built around the president has been congenitally unable to check government by whim and idiosyncrasy. Lyndon B. Johnson is a tempting target for analysis.[13] Adlai Stevenson's memoir is especially illuminating. On 28 April 1965, President Johnson announced that troops would land in Santo Domingo to save American lives threatened by civil violence. A White House meeting attended by Vice-President Hubert H. Humphrey, Secretary of State Dean Rusk, Special Presidential Assistant McGeorge Bundy, Ambassador Stevenson, and others considered how to amplify the statement. Johnson's draft went beyond rescuing Americans to include a sentence suggesting the need for preventing a Communist coup. Stevenson asked for clarification. Johnson frowned. Stevenson looked around for support and urged Humphrey to "say something!" Humphrey "put his finger to his lips and shook his head." Stevenson turned to Bundy: "What do you think?" True to his motto, to keep the options open, Bundy said "I am of twin minds." Johnson temporarily deleted the sentence—but put it back in a much stronger form when he addressed the nation on Sunday: the Communists had taken control of the Dominican rebellion, he proclaimed, and the United States would not tolerate another Cuba.

But if the initiative was the president's the action was soon in the hands of the military, which apparently preempted control[14]—and this leads us to a second problem.

## Bureaucracy-out-of-control

Despite his dangerously untrammeled initiative, the president's power often disappears in bureaucratic independence. Since World War II, great public agencies have broken out of effective political control. Bureaucracy refers to a combination of agency leaders with strategically located congressmen and often with the heads of organized groups directly affected by the policies in question.[15] When bureaucracy gets out of control, the definition and execution of public policy shifts from the hands of elected politicians, either Congress (in the sense of a collective body) or the president, and into the hands of assistant secretaries and bureau chiefs, congressional committee chairmen, and sometimes the heads of interest groups. Escape from control comes out of the defeat that president and Congress inflict on each other when each tries to control the bureaucracy by characteristically different methods.

The president's nature is unity; that of Congress, diversity. The president endeavors to control by trying to make sure that the budgetary demands of each agency are weighed against the demands of other agencies and are appraised in terms of governmental fiscal and monetary policy; by trying to ascertain that minor policy departures are not in conflict with major policies under which they are subsumed; and by striving for a degree of coordination among policies. The president's chief instruments are his personal staff and the Office of Management and Budget (a perennial villain in congressional eyes).

In its turn, Congress strives for control by dividing up problems and parceling them out among committees and subcommittees. With the recent upthrust of bureaucracy, however, Congress finds insufficient its usual control through chartering agencies, defining their statutory powers, annually financing them, and investigating them.

Indeed, the great bureaucracies not only (in effect) defy the president, but play the president off against Congress, pit the two houses of Congress against each other,[16] and fatten on the rivalries of congressional committees. In their frustration, Congress and the president struggle against each other for the control of the bureaucracy—and therefore of policy; but bureaucracy escapes.

Illustrations abound. Spending programs take on a life of their own, often hindering a shift in priorities to cope with new problems. Bureaucracy shapes substantive policies. For example, it has helped the arms race get out of hand, has concentrated on building dams to the derogation of other means of conserving and managing water resources, and has maintained farm price supports at a level that requires disproportionate budgetary outlays and brought on an unfortunate inflation of farm real-estate values.

To cope with bureaucracy, politicians in the White House and Congress have been urged to unite. The obvious road to union is through political parties. But it will not be enough for both ends of Pennsylvania Avenue to join hands. Bureaucracy permeates the land. The counter-organization must not only emerge in Washington. It has to flourish at the grass roots as well—a fact that reinforces the need for union through political parties that are effectively organized not only at the center of government but in communities spread over the country.

## Undue Influence of Private Groups

Bureaucracy could be discussed under the heading of group politics, a term that tends to swallow up all political phenomena. Nevertheless, there is enough difference in the response of government to organized group interests to call for separate analysis. In bureaucracy-out-of-control the locus of power moves significantly from a central direction but remains lodged in its own bastions in government. Meanwhile there is another face of power that shows itself in the ability of private interests to twist governmental policies to their own ends, or to stunt their effects, or to fence them out of certain private preserves, or even to kill them off entirely.

The role of pressure groups has long been subject to lively debate. A probe of pressure politics in the United States produces illustrations of the apparent effects of pressure on policy. Among many possible examples are these: the ability of the oil interests to maintain scandalously favorable tax treatment; the influence of the National Rifle Association in combating gun-control legislation; and the share of the Farm Bureau in inhibiting historical governmental efforts to reach the rural poor with the kind of public assistance that has become virtually the heritage of the well-to-do.

All this provokes comparison with Great Britain to see whether their version of party government provides a superior defense against pressure politics. The apparent answer is that it does; but the analysis presses out to embrace the role of producing and consuming groups in the collectivist age of modern government. The inference is that the great industrial communities require systematic policies in welfare and the management of the economy. Collectivist economic and social problems require a collectivist politics. Policies must be coherent, a fact that calls for an integrated government; but they must also be held to be conditional and contingent, a fact that calls for a concerted opposition. Once more the interpretation favors government by parties; but the parties themselves must have broad and fairly dependable bases in the electorate—and this leads us to examine the state of the public.

## The Travail of Public Opinion

In the United States, public opinion is nothing and everything. It is nothing because government in the sense of the power to make binding decisions is handed over to individuals, especially the president but also a number of others—congressmen, bureaucrats, and politicians in strategic positions—to say what government shall and shall not do. But the myth is that public opinion rules. The people are the one and only authoritative voice.

One result is to increase the tensions of citizens. Despite years of lament for the overburdened voters, elections and referendums continue to proliferate. Public indifference is often manifest. Public ignorance of issues is legendary and has been repeatedly demonstrated. And yet government summons individual voters to answer the most abstruse kinds of questions about policy.[17] And when elections end, pollsters enter with their unremitting questions.

The tension of citizens is the product of ambivalence. On the one hand they are told that their highest duty is to pursue their selfish interests—politically as well as economically, in groups as well as individuals. They are urged to organize and to look after their own. No group is enjoined to look to the common good just as no congressman is compelled to have a national point of view.[18] The single-minded pursuit of group selfishness has been justified by theories that a "hidden hand" is at work to ensure that the best of all possible worlds emerges from the interplay of selfish interests.

But this brave new world gets lost in the smog or the traffic snarl or the deterioration of communities, and people become conscious of a contradictory injunction: to look to the general welfare or the public interest. The people share this duty with the president. If the joint product of group pressures fails to cure public ills, America has been said to have a providential corrective. When the "scuffle of local interests" dissolves in economic depression or verges into warfare, we turn to the president.[19] *Along with the people—and alone with them—the president is responsible for the general welfare or the public interest. People and president share an obligation from which the interests are excused: a responsibility to the political community as a whole.*

Whereas the people cannot act the president can, if he has the power. Whether he has depends on his public prestige.[20] Overwhelmed by their own helplessness, in the face of their impossible responsibilities to achieve the general welfare, people may transfer their guilt and their expectations to him. If he brings peace, prosperity, safety, and tranquillity, he may enjoy their rapturous support. And yet the link between president and people is more complicated than this implies. Frustrated and anxious though they may be, the people are also indifferent and inattentive to the specifics of government until public actions press on private lives. In times of trouble over rising prices, precarious jobs, and unemployment, fear of violence, or sons at war, the president can get the public's ear. His temptation is to manipulate the gut issues or to smother them in patriotism. But his policies may fail. Pressures on citizens rise. Presidential prestige falters. The vibrant national leader whose strength was almost palpable in the living rooms over the nation and whose voice could clutch the spine is now a ghost. We have experienced it three times since 1950.

The travail of public opinion will yield to party government. In democracies the people are entitled to a decisive voice in deciding who shall rule. This birthright can best be had through an election that will provide them with a sense of sharing the powers—and the responsibilities—of governance. Centralized and disciplined parties to which not only governors but citizens belong can provide the link. They can also reduce the public tensions arising from the ambivalence between the group's drives for privilege and the citizen's obligation to seek the common good. For political parties can enable and require the citizens to subordinate their legitimate push to satisfy their interests to an overriding sense of responsibility to the public welfare. At the same time, party government can conserve the values of a vigorous and unified presidency while providing a safe and appropriate connection between president and people to replace the dangerous and improper one that now exists.

This list of problems is not exhaustive—the concluding chapter will briefly raise two others, the inability to replace presidents who are politically disabled and the disadvantages that have recently become apparent in calendar elections. These difficulties also appear amenable to party government. But now the overriding question of feasibility can no longer be postponed.

## Will Party Government Work?

One of the most rewarding things about the research for this study has been to find that many political scientists, from the most magisterial to those precisely oriented toward salient aspects of the polity, lend support to the plea for party government. When one turns to the question of feasibility, however, the weight of professional opinion seems to hold that the American public is too divided—too distributed among shifting, conflicting, and overlapping groups—to provide the social bases for durable political parties capable of reasonably stable majority government.

To deal with that question one must first ask what the prospects are that both major parties will be able to build majority support in Congress. The answer turns on Republican chances in the South. A confident affirmative cannot be given. And yet the outlook of the GOP is not entirely hopeless. Some secular trends may work to its advantage. The Democratic party appears to command an impressive southern congressional majority, present and prospective; but the tides may shift. Meanwhile, a provision can be made that will ensure that a newly elected president will enjoy a congressional majority.

On the second and more fundamental question, whether social divisions are deep enough to condemn party government as impracticable, an examination of the studies of American political attitudes and partisan behavior leads to an optimistic conclusion. Given institutional changes that would enable the test to be made, there is much evidence to suggest that the American electorate would provide a stable majority and, equally essential, an organized opposition effectively monopolized by a single alternative party.

## Conclusion: The Need for Reform

John Marshall wrote: ". . . we must never forget . . . that it is a *constitution* we are expounding."[21] The essence of constitutional democracy is limited government. Both words are critical. Without government there is anarchy. Order disappears except for Spinoza's law of nature in which the big fish swallow the little fish. No common defense prevails against foreign enemies; there is nothing common to defend. Government without limits, on the other hand, is tyranny and torture, fawning and favoritism, repression and humiliation. No commonwealth exists to establish justice and to define and try to achieve the general welfare.

The linchpin of limited government is the lively understanding shared by citizens of its needs and nature.[22] A government must govern, but a limited government will act subject to open and organized criticism. "To find out whether a people is free it is necessary only to ask if there is an Opposition and, if there is, to ask where it is."[23] Government and opposition both flourish in the establishment of due procedures that become known, accepted, and matters of habit.

Fundamental changes are recommended to provide America with appropriate procedures. To maintain and control a vigorous president; to reestablish the writ of the general government over the bureaucracy;

to invest public policy with greater internal coherence and more preeminence over the importunities of pressures groups—all these justify major constitutional adjustments. So does the need to resolve the social and psychological tensions that arise when a limited and divided—indeed, a splintered—government confronts the problems of a collectivist age. None of these statements will dissipate the danger inherent in sweeping reforms; but they should obviate any attempt to kill them off with the pejorative tag that they are merely "tinkering with the machinery."

So far as the specifics go, the proposals are highly debatable. The intention of this book is to contribute to public acceptance of the need for serious consideration of fundamental constitutional change. Indeed, one dares to hope to inform the spirit in which change is approached in the belief that the self-fulfilling prophecy contained in the search will be in proportion to the inspiration, integrity, and soundness of the analysis on which it is based. Above all, any proposals for reforms must be constrained by the first premises of constitutional democracy as a marriage of the popular will to limited government.

# 10 Reform

**For there are two main obstacles to the knowledge of things, Modesty that casts a mist before the understanding, and Fear that, having fanci'd a danger, disswades us from the attempt. But Folly sufficiently frees us, and few there are that rightly understand of what great advantage it is to blush at nothing and attempt everything.—Erasmus, *In Praise of Folly***

## The Intention

I am less sure of the proposals for reform than I am of the previous analysis. To make basic criticisms of present institutions implies a conception of a better alternative, one that I have called presidential leadership and party government. The change will require major surgery. One cannot stop short of bold and decisive departures. And yet a guiding principle should be to write the new Constitution in a way that permits considerable leeway. The ideal is to create conditions so that the conduct of government itself will be ruled largely by conventions rather than by fixed laws. It will be better to let the precise means of replacing presidents or leaders of the opposition develop by convention than to stipulate them in advance; the same is true for the means of enforcing party discipline and even for the use, devoutly to be wished, of dissolution as the sovereign means by which governments end and new governments are created. The principle of constitutional discretion is not altogether new with us; the present Constitution contains nothing that establishes political parties, congressional committees, the rule of seniority in Congress, or senatorial courtesy.

The proposals lie within the premises of constitutional democracy. "Constitutional" means "limited." With us the limits notably include those protections to citizens incorporated in the Bill of Rights as interpreted by the Supreme Court. Far from disturbing these limits, the proposed change should strengthen them, partly because the new Constitution should create a political system with a greater capability of providing political answers to political questions, thus diminishing the tendency to pull the Supreme Court into the "political thicket." Other limits include the way that governments are established, empowered, checked, and changed. Provisions of the present Constitution bearing on these matters would be amended but always in ways that will retain and strengthen the principle of limited government.

"Democracy" means that the people at large have a strong voice in their own governance, realized with us in the rights of petition and of the ballot. Proposals should strengthen and improve the electoral function by clarifying to voters their indispensable roles in the creation of governments and oppositions. In addition, our constitutional democracy, I assume, contains a "constituent group" of persons who not only revere the Constitution but who study it, know a good deal about how it works, understand its fundamental values, and are determined to preserve its principles.[1] The fact that one cannot denote the size of this group or precisely identify its membership does not diminish its importance. This book hopes to help convince members of the constituent group that fundamental constitutional change is necessary, is within the spirit of the Constitution, and will work.[2] One must assume that membership in the constituent group implies an enlightened distinction between the principles of constitutional democracy and any particular set of rules designed to achieve it. The experience of the other most populous constitutional democracies is in point. France has radically changed her Constitution since 1958. Germany and Japan became constitutional democracies after World War II. India was born as a constitutional democracy. Even Great Britain executed a major constitutional change between 1860 and 1890 and followed it up by drastically reducing the powers of the House of Lords in 1911 and 1949.[3] Only the United States persists with constitutional forms essentially as they were devised nearly two hundred years ago.

## Proposals for Reform

1. Presidents, senators, and congressmen should all be elected on the same date for four-year terms. The date would be fixed at four years from the inauguration of the last government but with the provision that the government, by law, could change the date and call an election.

2. The House of Representatives (hereafter, the House) should be elected from single-member districts as now but should be supplemented by approximately one hundred fifty members elected at large. Each party should nominate one hundred candidates. The party winning the presidency should elect the entire slate. The losing party

should elect a maximum of fifty at-large candidates, diminished by whatever number is required to give the winning party a majority of five in the House. At-large candidates would be nominated by committees of forty-one in each party, composed, for the incumbent president's party, of the president, the ten ranking members of his cabinet (rank being determined by the party), and thirty congressmen nominated by the House members of the president's party who are not in the cabinet and who are elected from single-member districts. The opposition party's nominating committee for at-large House members should be composed in the same way, substituting the leader of the opposition for the president and the ten ranking members of the shadow cabinet for the cabinet members. Methods of nominating single-district House candidates should not be stipulated except for the proviso that the same committee that nominates at-large candidates should have the right to reject local nominees on the ground that they have refused to accept party discipline.

3. Presidential candidates should be nominated by committees of the parties composed of all House members from single-member districts as well as all candidates for election in such districts. In the event of presidential disability, either physical or political, the nominating committee of his party should be empowered to suspend him temporarily or to discharge him, but in either event it should be required to replace him. The office of vice-president should be abolished.

4. The Senate should be deprived of its power to approve treaties and presidential nominations. Bills would continue to be examined in the Senate but if the Senate rejects a bill that has passed the House twice in the same form, sixty days having elapsed between the first and second passage, the bill would go to the president.

5. The president's veto would be retained but could be overridden by an adverse majority vote in the House; the Senate could force the House to reconsider but could be overridden by the House after sixty days.

6. That part of Article I, Section 6, Clause 2 of the Constitution that prevents members of Congress from serving in other offices of the United States should be repealed, but the proscription should be retained on the federal judiciary.

7. The runner-up in the election of the president should be designated leader of the opposition and provided a seat in the House with privileged membership on all committees and privileged access to the

floor. The opposition leader should have an official residence, adequate offices, and funds for staff, for travel and transportation, and for other expenses essential to the vigorous operation of his office. Like the president, the leader of the opposition would be removable by the presidential nominating committee of his party, with the power of removal matched by the obligation to replace.

8. Presidential elections should be by national ticket with the winning party identified by securing a national plurality of voters.

9. All parts of the present Constitution in conflict with the foregoing proposals should be repealed or modified to conform to them. The Twenty-second Amendment should also be repealed.

## Discussion of Proposals

Coterminous elections of president and Congress would go far to strengthen the voters' feelings, now systematically diminished by the separation of powers and the methods of nominating and electing federal officials, that they are sharing in the creation of the government and the opposition. The voters should thereby have a sense of participation in the awesome and necessary task of governing the nation. Voters would be linked to the government or to the opposition by bonds of partisan feeling.[4] Enabling the national parties to veto the nominations of persistent mavericks in Congress would both strengthen parties and also educate the voters to the governing function of parties—that the winning party is elected to govern and the individual congressman is supposed to share in concerting policies necessary to govern rather than to make a career of independence.[5]

The electoral system should both empower the president and subject him to new controls. He would be empowered by winning a national election with an assured congressional majority whose members would have strong incentives to support the administration's position. At one stroke, this move would revolutionize the organization of Congress. Seniority and senatorial courtesy would disappear. The "whirlpools" in which bureaucrats and strategically located congressmen develop virtual autonomy in various agencies would be overridden by the steady flow of political power within the governing party. But if all these developments increased presidential influence, there would also be new controls. Control of the president should derive from the fact that he would now be the choice of a majority rather than of "the people"; he and the country would be continually reminded of that fact by the presence of an opposition headed by a leader who commands resources second only to the president's to publicize his party's position and to dramatize his leadership. Moreover, while the president would continue to enjoy preeminence, he should now be viewed as the leader of a team in which the necessarily collegial approach demanded of governments by modern conditions is orchestrated. The team would be largely composed of politicians like himself who retain their congressional offices but are no longer prevented from sharing in the government; many of them would exhibit their ambition to succeed the president someday, and this should also teach the public that the president is the first person in a government rather than a lone leader of nearly imperial dimensions.

In addition to strengthening the government against the bureaucracy, the changes would increase its ability to resist private pressures for the following reasons. First, House members would know that they were elected for four-year terms coterminous with the president, that their own electoral fate and that of their presidential candidate (who must win if their party is to control the government) will commonly be closely tied to the electorate's appraisal of the performance of the parties as wholes. Second, the electoral turnout will be uniformly high —the midterm drop of 20 to 30 percent in the total vote for congressmen would disappear[6]—and this fact will decrease the leverage organized interests have on candidates by threatening to punish them at the polls when the vote is light; such interests would be submerged in the tide of voters who, less specifically informed about candidates, are more inclined to vote their approval or disapproval of the government. Third, knowing that their use of the party label will be denied if they persistently oppose the party's legislative policies, House candidates will perceive their political survival and political future to be bound up much more with the success of the national party than (as now) with their own ability to build a local political organization and to nurse local interests. Fourth, the new rules should diminish the expenditures in campaigns by cancelling off-year elections and later on, it is hoped, by leading to a substitution of elections following dissolutions for fixed calendar elections. In addition to strengthening the national orientation of voters and putting more muscle in the national parties, this last step would greatly shorten campaigns and thereby slash campaign expenditures.

Party government and short electoral campaigns will enable us to smother the viper of corruption that threatens to poison this country. In the United States it has well been said "elective offices can be purchased; . . . votes of Federal, state and local officials are bought and sold every day; . . . access of the people to their government is blocked by a Chinese Wall of money."[7] There was a time when similar corruption flourished in Britain. But it came to an end. "Thus, Old Corruption was cleaned up by a combination of methods. . . . Above all, a highly organized party which claims for its leading members the responsibility of Government has to proclaim all the political virtues and dare not practice secret vices."[8]

The addition of at-large House members has been suggested by others in order to increase the national point of view of Congress.[9] I propose to manipulate the device to ensure that we will have party government.[10] In this way the party capturing the presidency will also control Congress. Under the suggested formula, the Republicans would have been allotted one hundred congressmen-at-large in 1968 and the Democrats forty-three; the Republicans would then have had two hundred ninety congressmen and the Democrats two hundred eighty-five. In 1972, the Republicans would have been allotted one hundred congressmen-at-large and the Democrats forty-five; the Republicans would then have had two hundred ninety-two congressmen and the Democrats two hundred eighty-seven.

Under this proposal, voters would know that they are electing a government and an opposition. Let me admit at once that the election would be rigged to produce a majority government even though some voters seem to prefer, or at least to be indifferent to, divided government. But let me also insist that elections are now rigged to produce divided governments. It is true that ticket-splitting voters, measured by the number of congressional seats with split electoral results, has doubled since the 1930s.[11] But it is also true that the overwhelming majority of the electorate still vote for candidates for the presidency and for Congress who bear the same party label. In 1956, an exceptionally high year for ticket splitting, 79 percent of the voters preferred presidential and congressional candidates of the same party.[12] The facts are that divided governments are foisted on the public by a minority of not more than 20 to 25 percent of the voters.

More controversial will be the proposal to reduce the power of the Senate that has many admirers among scholars and perhaps has increased its public support by the Watergate investigation of 1973. The chief reason for the change is, once more, to create conditions favorable to party government. In this way there will be one prime forum for debating public policy, for seating the opposition, and for registering the confidence reposed in government by the national legislature (and, through the legislature, by the public). It is extremely difficult to have two theaters for testing the viability of government as the moves of both Britain and France to reduce the power of their second chambers show. It compounds confusion if the government has to fight for its program in two chambers with entirely different power bases. More important, it disturbs and perhaps destroys that perception of government that the voter must have in order to develop a sense that he is sharing, through his party, in running the country. It might also be pointed out in an age that places great emphasis on the principle of one person, one vote, that the Senate becomes increasingly anomalous. In 1790 half the states with the smallest populations (dividing South Carolina, the middle state) had 22 percent of the total population of the United States; in 1970, the smallest half of the states had only 15 percent of the total.[13]

What would happen to the many able senators? They would move into the reconstituted House. Political talent gravitates toward power. In the House, under the new rules, they could aspire to be members of the cabinet or of the shadow cabinet; their honorable ambitions to be president would find a natural outlet in the House. There, too, they would gain not only the legislative experience but also the administrative experience demanded by modern government.[14]

Election of the president—and of congressmen-at-large—in a national constituency would end the special leverage now enjoyed by more populous states by virtue of the unit rule that gives the entire electoral vote of each state to the party with a plurality of the presidential vote. The past justification of this leverage as needed to countervail the rural–small town advantage vested in Congress is losing credibility because of changes in the economy and would be demolished by the new government with its congressmen-at-large and its emphasis on disciplined parties. The extraordinary influence now vested in racial, ethnic, economic, or regional blocs by their strength in critical states would disappear or be transferred in a diminished form to the national arena. In view of the vast electoral turnout that the new scheme would ensure, such leverage would be much more difficult to organize into plausible threats. Moreover, efforts to identify a national voting bloc and to use its powers to pressure candidates or parties would have to be heavily advertised. Inevitably, this would court counterattacks. At the same time, the new scheme would give every voter everywhere a sense of equal significance in the vital act of creating a government.[15]

What chance would third parties have under the proposed Constitution? Not much. But then they have had little chance under the present Constitution as is indicated by the fact that the average total vote for all minority candidates from 1828 through 1964 was only 5.2 percent of the total popular vote.[16] The present electoral college invites a minority candidate with sectional strength but a small fraction of the total vote to try to throw the election of the president into the House of Representatives where he can blackmail the winner. This situation, which is widely considered to be a flaw in the present Constitution, would not occur under the proposed document. If a third party candidate should poll a significant number of votes, only the runner-up for the presidency would have the congressional seat, the title of leader of the opposition, and the accouterments of office. History has raised the question only once since the Civil War—in 1912 Theodore Roosevelt would have been declared the leader of the opposition rather than William Howard Taft.

## A Theory of Representation and the Division of Political Labor

The proposals for reform arise from the seriousness of the great political issues raised in earlier chapters. Their adoption should strengthen the president's hand in important respects while significantly controlling his initiative, the autonomy of the bureaucracy, the forces inimical to coherent policy, and the thrust of private group pressures. Moreover, the reforms should make for better theory and practice respecting public opinion, representation, and the division of political labor. The travail of public opinion would be reduced by relieving the public of the impossible demands now placed upon it, by providing an essential and practicable political role for the public, and by greatly diminishing the frustration of the public produced by the studied confusion of the present governmental system. The pressures to eliminate corruption stemming from party government should reassure the public. At the same time, a theory of representation should emerge that should provide a satisfactory answer to the question, How is the community as a whole to be represented?[17] Rather than fixing responsibility on the president alone and then flagrantly fragmentizing it among the public at large, the new Constitution will charge governing parties with finding conditional and contingent solutions to the pressing social and economic problems of the modern polity.

Underlying the discussion of the role of public opinion and of the theory of representation to which it leads is the question of the division of political labor. Generalizing from English experience, Ernest Barker wrote that "government by discussion proceeds through four main stages—first of party, next of the electorate, then of parliament, and finally of cabinet." On the relationship between electorate and party, he noted the difficulties of reconciling the electorate's freedom of choice of individuals with its selection of a governing party as well as the inherent ambivalence in the exercise of free discretion by the same act that also delegates discretion. But he was clear that delegation was necessary.

> Just as, in the act of selection, or, as it may also be termed, the moment of "taking over" from the party, the electorate has at once to follow the guidance of the party and to exercise its own judgment, so in the act of instruction, or the moment of "handing over" to the parliament, the electorate has both to guide parliament and to vest it with its own deliberative discretion. . . . But, in a more particular sense, the electorate does not give detailed instructions or specific mandates. It creates a legislature; but it does not dictate legislation or participate in legislation. It elects a body for the purpose of doing something beyond what it does itself, and something different from what it can do itself.[18]

Discussion of radical political reforms seems to be dictated by the awesome shortcomings of present institutions. By the same token efforts to find correctives force the argument into fundamental questions of political theory concerning the nature of man, of society, and of government. Much debate should center on these questions—and it should do so with considerable urgency not only for reasons already delineated but for others as well, especially the growing vulnerability of present institutions to crises.

## Crises

Until very recently much optimism was voiced about the ability of the American system to cope with crises. Herbert Agar wrote that in a country so large and heterogeneous as the United States, "most politics will be parochial, most politicians will have small horizons. . . . For the most part the members of the Senate and House must represent their own states and districts." But when "good times" fail and "the bombs fall or the banks close or the breadlines grow by the millions," the country "must recapture the distributed sovereignty and act like a strong and centralized nation."[19]

The government can meet crises, Agar insisted, because the president, the one man elected at large by voters, becomes "the voice of the people." And he quoted Pendleton Herring: "Our system can respond quickly to emergency conditions once the public is convinced of the need. Presidential leadership sustained by a united people has power for any crisis."

As long as crises were occasional and episodic, the formula seemed to work, although even then it was subject to the charge that it rested on a reification of public opinion and a continuation of good luck on which the country cannot safely rely.[20]

More recently, Richard E. Neustadt has given a contrary appraisal of the ability of the system to cope with crises. In the great Depression of the 1930s and World War II, crises united the country. But the Korean war failed to bring consensus and in the late 1950s the cold war became a way of life. However dangerous the events, the people no longer felt them as crises. Indeed, our politics had fundamentally changed.

> The weakening of party ties, the emphasis on personality, the close approach of world events, the changeability of public moods, and above all the ticket-splitting, none of this was "usual" before the Second World War.

In consequence, Neustadt thought that "crisis consensus" would probably be unattainable by future presidents.

> We may have priced ourselves out of the market for [productive] crises on the pattern Roosevelt knew—productive in the sense of strengthening his chances for sustained support *within* the system.

Judging from the fifties, neither limited war nor limited depression is productive in these terms. Anything unlimited will probably break the system.[21]

If crises threaten to break the system, all the more reason to consider fundamental reform. In certain specific ways party government will help the country cope with crises. For one thing it will organize and orient public opinion so that a degree of unity can be obtained. The same ability that enables the opposition to mount a concerted criticism of government also empowers it to collect the political forces of the country behind a unified leadership, if this is necessary. Moreover, party government will help the country to cope with crises by permitting the replacement of a leader who has become politically disabled and also by providing a means of escaping from the tyranny of fixed calendar elections. Both points need some elaboration.

## Presidential Disability and Presidential Removal

Concern about presidential disability flagged between Woodrow Wilson's collapse in 1919 and Dwight D. Eisenhower's heart attack of 1955 followed by an operation for ileitis in 1956 and a stroke in 1957. Ensued the Twenty-fifth Amendment (1967) that attempts to provide for the removal of presidents unable to discharge their duties.[22] Untested, the amendment might work if the president is physically disabled. But what if a president becomes *politically* disabled? When the nation is in great peril a healthy president might lose his will to act, his grasp of events, or his nerve. He might panic in times of grave civil disorders or external threats. Or he might become obsessed with the use of force as an answer to problems or simply too reckless in the use of force—or he might be too permissive, letting events ride until they are beyond whatever control was initially possible.

The proposal that the president's congressional party should be able to replace him would take care of this difficulty. Its wisdom is justified by recent British history. In 1940 Winston Churchill replaced Neville Chamberlain as prime minister and then summoned the British to an effort of incalculable benefit to the western world. Similarly, Lloyd George replaced Herbert Asquith as prime minister during World War I. Admiration for Lloyd George was less unanimous than for Churchill, yet British historians generally agree that the substitution was needed in 1917. In 1956 when the British-French-Israeli attack on Egypt failed, Prime Minister Anthony Eden, who was somewhat discredited politically by the event (and whose health also suffered), could give way to Harold Macmillan.

Much flexibility exists in a government by political parties that, in addition to their mass bases and their national organizations, have corps of leaders so trained and tempered in the art of government that they come to accept not only the duty to choose and follow a leader but also the obligation to replace him if he fails. The risk that ambitious men will readily conspire to replace their chief is nullified by the rarity of the examples. A prime minister in Great Britain or a president in America is the most valuable political property of his party. To remove him his associates have to risk their own careers. No one has expressed the proposition more succinctly than Winston Churchill:

> The loyalties which center on number one are enormous. If he trips he must be sustained. If he makes mistakes they must be covered. If he sleeps he must not be wantonly disturbed. If he is no good he must be pole-axed.[23]

## Calendar Elections

Party government would help the country cope with crises by enabling not only the removal of politically inadequate leaders but also the substitution of flexible election dates for those fixed by the calendar. When the country is fighting for its life the extra danger of a quadrennial election may be extreme. Since 1812 we have held only two presidential elections during major wars. Clearly, we can no longer count on such good fortune. The new danger inherent in calendar elections is compounded also by "the close approach of world events." The great powers will henceforth be mutually capable of mounting devastating strikes on a moment's notice. The same is true of smaller harassments. The present determination of electoral dates by the inevitable wheel of alternate Octobers, with months given over to campaigns and interregnums, contains a threat to national survival. The risk is compounded by the Twenty-second Amendment.

Party government permits an alternative. Elections within reasonable intervals can be required by the Constitution with their timing left to statute law that means, subject to certain safeguards, to the discretion of the governing party. Potential enemies would then be deprived of much of their advantage, first, because they would no longer be able to plan harassments according to the calendar and, second, because the periods of vulnerability in campaigns would be telescoped from interminable months to a few weeks.[24]

## Conclusion

On behalf of what universal idea are the Italians in Rome? asked Theodor Mommsen.[25] If a similarly malicious question were applied to the United States, every American could answer that he inherits the universal idea of constitutional democracy. As noted earlier, the words are inseparable. Limited government came to us largely from England, although we have shaped its content. According to C. H. McIlwain, England became national while it was still feudal so that the limits of the feudal contract were wrought into the frame of government.[26] We escaped the feudal heritage, but happily we persisted in maintaining the constitutional ideal. Democracy or rule by numbers is likewise ancient, but America has given it a peculiar stamp with the emphasis on equality. If some of the sources are also English—"the poorest he that is in England hath a life to live as the richest he"[27]—the equalizing spirit took charge in America as it never has in England. Constitutionalism remains the most valuable secular development of mankind. Egalitarianism is the most explosive idea in the world today.[28]

How Americans will bear their precious burden of ideas will depend on how well they learn to live with the tensions between the limits imposed especially in the Bill of Rights and the drives implicit in popular government. Only part of the answer is provided by majority rule.

> The justification of majority rule in politics is not to be found in its ethical superiority. It is to be found in the sheer necessity of finding a place in civilized society for the force which resides in the weight of numbers.[29]

With us, the force of numbers is not ultimate. Our nation cannot wipe out the absolute proscription against using torture to extract confessions and still remain a constitutional democracy. If torture is used in our democratic constitutional government (as it has been and may be again), it is illegitimate, an aberration; whereas in practice under authoritarian regimes of either wing—and in theory under democracy defined as simply a means of making decisions of whatever scope—torture is a perfectly proper way of obtaining information or enforcing commands.

The force of numbers is also limited by recognizing that most questions decided by majorities are settled only conditionally. That thought may be small comfort to the losers; but it is vital to the health of the polity because it recognizes the contingent and tentative character of policies that must, nevertheless, be formulated and applied to pressing social and economic problems. This is part of the rationale underlying the case for party government with its emphasis as much on the opposition as on the administration.

These points answer the argument that there is no alternative between absolute majority rule and minority rights,[30] an example of the fallacy of either/or. Our constitutional democracy requires both. The marriage between popular government and the Bill of Rights recognizes that the only way to prevent the human condition from degenerating into bestiality is to force men to live with many of their natural divergencies and contradictions. Nevertheless, Austin Ranney has written that

> responsible and disciplined parties will appeal only to a people committed to the desirability of unlimited majority-rule, and . . . the American people, far from believing in majority-rule, are devoted to the preservation of minority *rights* against majority rule.[31]

The first clause can be dismissed as an effort to stack the deck. But what of the second, namely, that Americans have rejected majority rule (which is equated with party government) in favor of minority rights? This is a curious statement. Millions of Americans have lived with equanimity in situations where local majorities oppressed local racial or ethnic minorities. We accept without qualms the majority principle in deciding state, national, and local elections as well as in voting in our legislative bodies, in judicial panels, and in referenda. But we have also preserved minority rights, even though they have not always been equally accessible to all minorities; and we have done so with institutions that make "due process of law" a meaningful phase. It cannot be asserted too dogmatically that the union of the majority principle and minority rights is the essence of our civil experience. A tango without both partners would, indeed, be the last.

What kind of government will Americans want a generation from now? In 1969 nearly 71 million Americans were less than eighteen years old. By 1987—the two hundredth anniversary of the Constitution—those who survive will all have reached voting age, swelling the potential electorate by perhaps 67 million or some 40 percent of the total. Let us assume that Thoughtful Americans point now toward a fundamental decision about the framework of their government fifteen or twenty years hence. If so, the decision should then be founded on reasoned analyses of the polity—not only as it is now but as it might be. The most obvious place to make the analyses is in the colleges and universities. In 1930 out of 22.5 million Americans between the ages of fifteen and twenty-four only 1.1 million were enrolled in colleges and universities. Of 24.5 million in the same age bracket in 1966, those enrolled had risen to 5.5 million. By 1987 a sizable fraction of the eighteen to thirty-six cohort will have had university experience. It is from sources such as these that great amounts of new blood should be pumped into the constituent group.

But what will Americans have learned a generation from now about their political system? Americans are said to have fully considered and rejected the case for party government, for example, because Woodrow Wilson's *Congressional Government* had gone through twenty-five printings by 1925.[82] On the contrary. Precious few have heard or read Wilson's arguments. If they study political science beyond the level of civics courses, they learn from "teaching books."

> In 1964 the teaching books in American government fail in at least three of the same ways the teaching books of thirty and more years ago failed. They continue to fail as efforts to "make good citizens," because handbooks are not guides and guides are not inspiration. They continue to fail as books of ideology or indoctrination or pure and simple debate, because they go to such lengths to avoid a point of view. . . . But most important, there is no trend away from the failure to encourage political inquiry and understanding.[83]

This book does not pretend to be a text, but it has a point of view and does aim to encourage political inquiry and understanding. Let the debate proceed!

"Gentlemen," said the aging Edmund Burke, "what shadows we are, what shadows we pursue." One remembers Tolstoy's characterization of Czar Alexander's adviser, Speransky, who never considered that all

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he thought and all he believed might be meaningless nonsense. The enormousness, perhaps the enormity, of this undertaking has never been far from my mind. And yet there is a compelling need for architectonic analysis. All of us feel the thrust of powerful drives of individualism, of group or tribal interest, of egalitarianism, of collectivism, and even of racism. Excepting racism, each has its virtues; but, following Aristotle, each has its perversions. Individualism can become solipsistic and verge into anarchy and violence; "that timid, staring creature, man" may have a bomb in either hand. Group appetite can become "an universal wolf." Equality can breed a deadening uniformity. Collectivism can degenerate into a totalitarian state. The task of politics and government is to contain, moderate, and sublimate these drives. Political theory must illuminate the art of government, and political science must guide its application to particular polities, each largely *sui generis*. Perhaps above all the need is for a revision of ancient political myths to inspire the belief that a new world is possible and that it will come—something that goes beyond *vox populi, vox dei* to express and ennoble the dilemmas of the human condition and yet to reconcile them with a call to action. If a poet exists who is not up to his eyeballs in self-pity, this may be his hour.

# Notes

### Introduction

1. V. O. Key, Jr., *The Responsible Electorate* (Cambridge, Mass.: Harvard University Press, 1966).
2. Ibid., p. 30.

### 1. The Constitutional Potential of Party Government

1. "The National Commitments Resolution," 91st Cong., 1st sess., Calendar No. 118, report No. 91–129 (to accompany S. Res. 85) 16 April 1969. Text of Secretary of State William P. Rogers on "Authority for Bombing in Cambodia," *New York Times,* 1 May 1973. (Qualified somewhat by the War Powers Act of 1973.)
2. See the exchange between Senator Sam Ervin, Jr., and John J. Wilson in the Watergate *Hearings,* 25 July 1973.
3. Richard E. Neustadt, *Presidential Power* (New York: Wiley, 1960), especially chap. 3.
4. Alexander Hamilton, *Federalist Papers No. 70.*
5. Quoted in Neustadt, *Presidential Power,* p. 106.
6. These include *Federalist Papers No. 67 to No. 77;* Henry Jones Ford, *The Rise and Growth of American Politics* (New York: Macmillan, 1898); Woodrow Wilson, *Constitutional Government in the United States* (New York: Columbia Univ. Press, 1908); Wilfred E. Binkley, *The President and Congress* (New York: Vintage Books, 1962), first published as *The Powers of the President* (New York: Doubleday, 1937); E. P. Herring, *Presidential Leadership* (New York: Farrar and Rinehart, 1940); Edwin S. Corwin, *The President: Office and Powers* (New York: New York Univ. Press, 1940, 1957); Harold J. Laski, *The American Presidency* (New York: Harpers, 1940); Louis Brownlow, *The President and the Presidency* (Chicago: Public Administration Service, 1949); A. N. Holcombe, *Our More Perfect Union* (Cambridge,

Mass.: Harvard Univ. Press, 1950); James M. Burns, *Presidential Government* (Boston: Houghton Mifflin, 1965); Rexford G. Tugwell, *The Enlargement of the Presidency* (Garden City, N.Y.: Doubleday, 1960); and Louis W. Koenig, *The Chief Executive* (New York: Harcourt, Brace, 1964).

7. Early recognition of the problem appeared in Holcombe, *Our More Perfect Union*, p. 424; *Toward a More Responsible Two-Party System*, Report of the Committee on Political Parties of the Amer. Pol. Sci. Asso. (*APSR*, September 1950, supplement), pp. 14, 93; E. S. Corwin, *The President: Office and Powers*, chap. 7; and Robert Dahl, *Congress and Foreign Policy* (New York: Harcourt, Brace, 1950), chaps. 7 and 8.

8. Warren Miller, University of Michigan's Institute for Social Research, a study reported in Boyce Rensberger, "Study Finds Most Lack Trust in the U. S.," *New York Times*, 5 Nov. 1971.

9. Justice Oliver Wendell Holmes, Jr., quoted in Robert A. Horn, *Groups and the Constitution* (Stanford: Stanford Univ. Press, 1956), pp. 2–3.

10. Gaddis Smith, review of *The Pentagon Papers*, edited by the *New York Times*, by the Beacon Press (Boston); and by the Department of Defense (Washington, D.C.). *New York Times Book Review*, 28 Nov. 1971, p. 30.

11. George E. Reedy, *The Twilight of the Presidency* (New York: New American Library, 1970).

12. W. Ivor Jennings, *The British Constitution* (Cambridge: University Press, 1942), p. 77.

13. Eric Sevareid, "The Final Troubled Hours of Adlai Stevenson," *Look*, 30 Nov. 1965. Compare Richard Walton, "The Last One Hundred Seventy Days of Adlai Stevenson," *Esquire*, Sept. 1968, p. 133.

14. General David M. Shoup, with Colonel James A. Donovan, "The New American Militarism," *Atlantic*, April 1969.

15. Richard E. Neustadt, "Politicians and Bureaucrats," in David B. Truman, ed., *The Congress and America's Future* (Englewood Cliffs, N. J.: Prentice-Hall, for the American Assembly, 1965).

16. "A leading Republican on Foreign Affairs remarked . . . 'There's a Chinese Wall between the two houses. There is more bipartisanship in Congress than there is bicameralism.' " H. Bradford Westerfield, *Foreign Policy and Party Politics* (New Haven: Yale Univ. Press, 1955), p. 123.

17. An early exposition of the inability of public opinion to decide such issues was provided by A. Lawrence Lowell. See Austin Ranney,

*The Doctrine of Responsible Party Government* (Urbana: Univ. of Ill. Press, 1954), pp. 51–52.

18. Roland Young, *This is Congress* (New York: Knopf, 1943), p. x.
19. Herbert Agar, *The Price of Union* (Boston: Houghton Mifflin, 1950), p. xiv.
20. This analysis draws on Neustadt, *Presidential Power*, chap. 5.
21. *McCulloch* v. *Maryland*, 4 Wheat. 316 (1819).
22. Of the laws of the commonwealth the most important, wrote Rousseau, "was not graven on the tablets of marble or brass, but on the hearts of the citizens. This forms the real Constitution of the State . . ." *The Social Contract*, book II, chap. 12.
23. W. Ivor Jennings, *The British Constitution*, p. 78.

## 10. Reform

1. C. J. Friedrich, *Constitutional Government and Democracy* (Boston: Ginn, 1950). See index under "Constituent group."

2. I anticipate criticisms such as David B. Truman's that advocates of sweeping constitutional reform "do not indicate how we can get from here to there" (*The Governmental Process* [New York, Knopf, 1951], p. 530). With respect, I propose to get from here to there by educating the "potential group" described by Truman in 1951 and, more sharply and succinctly, in 1971 (ibid., index under "Interest Groups: potential," and, in the 1971 edition, "Introduction to the Second Edition," pp. xxxviii, xlii, and xlv). And to those who, with Henry Steele Commager, consider it "wildly improbable" that Americans would embrace sweeping constitutional reform, let me say, again with respect, that on Saturday, 20 October 1973, there was little that any longer seemed "wildly improbable" (Commager, "The Presidency After Watergate," *New York Review of Books*, 18 Oct. 1973, p. 51). In the light of events, prudence surely enjoins us to make an analysis *much more thorough than we have ever made before* of the *constitutional* alternatives that may exist. There may be harsher alternatives. At the risk of incurring the charge, which I do not think will properly lie against this book, of advocating a "devil" theory, I must say that circumstances may arise in which we ought to consider a military coup something less than "wildly improbable."
3. Allen Potter, "Great Britain: Opposition with a Capital 'O'," in Robert A. Dahl, ed., *Political Oppositions in Western Democracies* (New Haven: Yale Univ. Press, 1966), esp. p. 13. K. B. Smellie, *A Hundred Years of English Government* (London: Duckworth, 1950), chap. 5. W. Ivor Jennings, "On the House of Lords," *Parliament* (Cambridge: University Press, 1957), chap. 12.
4. David Butler and Donald Stokes, *Political Change in Britain* (London: Macmillan, 1969), chap. 1.
5. British experience suggests that constituency parties come to insist as strongly as national parties that their candidate accept and support the program of the national party. Leon D. Epstein, *Political Parties in Western Democracies* (New York: Praeger, 1967), p. 219.
6. V. O. Key, Jr., *Politics, Parties, and Pressure Groups* (New York: Crowell, 1964), p. 568.
7. John Gardner, "You Are Being Had," *New York Times*, 4 July 1971.
8. W. Ivor Jennings, *Party Politics*, vol. I, *Appeal to the People* (Cambridge: University Press, 1960), p. 111.
9. Rexford G. Tugwell, "The Model Constitution," *Center Magazine*, Sept. 1970, p. 28. Chester I. Barnard, "Bureaucracy in a Democracy: Book Review Article," *APSR* (Dec. 1950), pp. 990–1004.
10. Compare Richard E. Neustadt's proposal in "The Presidency at Mid-

Century," *Law and Contemporary Problems* (Autumn 1956), pp. 610–45, at p. 641.

11. Walter DeVries and V. Lance Tarrance, *The Ticket Splitter: A New Force in American Politics* (Grand Rapids, Mich.: Eerdmans, 1972), p. 30.
12. Milton C. Cummings, Jr., *Congressmen and the Electorate* (New York: Free Press, 1966), p. 13.
13. Respecting nominations to the U.S. Supreme Court, when presidents and Senate majorities belong to the same party, the Senate has nearly always approved appointments (98 of 108 approved between 1790 and 1970). Between 1894 and 1968 the Senate rejected only one Supreme Court nominee. If presidential nominations to the federal courts were published ninety days before appointments were made, the opposition, the bar, and the press would have time to bring forth the kind of information that eliminated certain nominees in 1968 and 1970. See, generally, Robert Scigliano, *The Supreme Court and the Presidency* (New York: Free Press, 1971), pp. 96–105.
14. Richard E. Neustadt, *Presidential Power* (New York: Wiley, 1960), chap. 7. Michael R. Gordon, "Civil Servants, Politicians, and Parties," *Comparative Politics* (Oct. 1971).
15. Thoughtful analyses of proposals to change present methods of presidential election are provided by Neal R. Peirce, *The People's President* (New York: Simon and Schuster, Clarion ed., 1968), and Alexander M. Bickel, *The New Age of Political Reform* (New York: Harper & Row, 1968). Both, however, deal with the problem on the assumptions of maintaining general constitutional arrangements and not as part of a proposal for comprehensive constitutional change.
16. William Nisbet Chambers and Walter Dean Burnham, eds., *The American Party Systems* (London: Oxford Univ. Press, 1967), p. 31.
17. Samuel H. Beer, "The Representation of Interests in British Governernment: Historical Background," *APSR* (Sept. 1957), p. 614. See also Alfred de Grazia, *Public and Republic* (New York: Knopf, 1951), p. 251. The other question, how are particular interests to be represented, has been vigorously answered by the formation of pressure groups.
18. *Reflections on Government* (New York: Oxford Univ. Press, 1942; Galaxy ed., 1958), pp. 37, 43–44. See also Alfred de Grazia, *Public and Republic*, p. 251 and especially chap. 9. John C. Ranney used the division of labor to illuminate the role of public opinion in

democracies ("Do the Polls Serve Democracy?," *Public Opinion Quarterly* [1946], pp. 249–60).

19. Herbert Agar, *The Price of Union* (Boston: Houghton Mifflin, 1950), pp. xiv, xvi.

20. In a remarkable concession, appearing in a footnote on pp. 279–80, Agar acknowledged that the American system has worked so far by virtue of a "remarkable series of accidents. . . . It is a question whether the United States should continue to stake the future on such haphazard strokes of good fortune."

21. Neustadt, *Presidential Power*, p. 186.

22. "On several occasions in our history when the President was disabled, the Ship of State simply drifted" (John D. Feerick, *From Failing Hands* [New York: Fordham Univ. Press, 1965], p. 20).

23. Churchill, *The Second World War*, vol. 2, *Their Finest Hour* (Boston: Houghton Mifflin, 1949), p. 15.

24. The risk of foreign harassment is not the only disadvantage borne of calendar elections that induce protracted campaigns that subject candidates to unnecessary physical strain, greatly increase electoral costs, and distort the essential process of political debate. The last point needs amplification. The important and valuable emotional commitments in campaigns do not provide the best conditions for the rational discussions that constitutional democracies, above all other types of government, must stress.

25. G. A. Borgese, *Goliath: The March of Fascism* (New York: Viking, 1937), p. 78.

26. "Medieval Estates," chap. 23 of *Cambridge Medieval History*, vol. 7.

27. A. D. Lindsay, *The Modern Democratic State* (New York: Oxford Univ. Press, 1947), p. 118.

28. See the comments on the disruptive projection of the western way of life into China in Tang Tsou and Morton H. Halperin, "Mao Tse-Tung's Revolutionary Strategy and Peking's International Behavior," *APSR* (March 1965), pp. 80–99, at p. 99.

29. Walter Lippmann, *The Phantom Public*, p. 57, quoted by Lindsay Rogers, *The Pollsters* (New York: Knopf, 1949), p. 89.

30. Austin Ranney and Willmoore Kendall, *Democracy and the American Party System*, chap. 2, esp. p. 37.

31. Austin Ranney, *The Doctrine of Responsible Party Government* (Urbana: Univ. of Ill. Press, 1954), p. 160. Compare his remark

that "Lowell's denial of their major premise—that Americans want effective majority-rule democracy—is one of the most devastating and fundamental criticisms ever made of the party government school . . ." (p. 67).

32. Ibid., p. 160, footnote.
33. Theodore J. Lowi, "American Government, 1933–1963: Fission and Confusion in Theory and Research," *APSR* (Sept. 1964), pp. 589–99, at p. 597.

from The New Republic, October 26, 1974

## Where TRB and Arthur Schlesinger, Jr. Miss the Point

# Parliamentary Government and Ours

### by James L. Sundquist

**One hesitates to intervene in a family feud between two such worthies as Arthur Schlesinger, Jr. and *The New Republic's* columnist TRB, but their debate about constitutional reform carried in the pages of this magazine needs to be brought into sharper focus.**

**TRB (July 20, Sept. 28) looks at the parliamentary systems of Canada and Great Britain and finds in them answers to some of the institutional problems that perplex America. Prof. Schlesinger (Aug. 31) replies with an authoritative account of the weaknesses of the parliamentary system. Both miss the point.**

**TRB made a tactical error in even suggesting that**

the parliamentary system in its totality should be transplanted here. No change that radical could ever happen. Moreover such a proposal gives skeptics an unnecessarily large target at which to shoot. They can pick and choose those aspects of the British and Canadian systems that can be made to compare unfavorably with ours, and have for themselves, as did Schlesinger, a rhetorical field day.

But TRB did some picking and choosing of his own among the particular features of the parliamentary system that might be transplanted to this country. Here he is both constructive and realistic. Of the three aspects of the parliamentary system that TRB commends, two are minor and can be disposed of quickly.

First is "question-hour"—a requirement that the President and other administration officials appear before the Congress at a stated time, on television perhaps, to answer whatever questions any member might wish to throw at them. I share Schlesinger's skepticism on this one. One of the first things learned by a rising politician in any democracy is how to artfully avoid giving information he does not want to give. A question period might elicit some marginal information not now obtainable through congressional hearings and official news conferences, but I doubt that it would be worth the additional demands of time and energy it would impose upon administration officials, particularly the President.

Second is the removal of residence requirements, so that a Fulbright defeated in Arkansas, for instance, could run in Tennessee or Oklahoma. It would be a gain, no doubt, if other states had laws and traditions on this matter as liberal as those of New York—where a Massachusetts Kennedy and a Texas Clark have won their party's nomination for high office—but this shortcoming in our system is hardly a crucial one.

That leaves TRB's third and truly fundamental suggestion. He would make it possible for Congress to remove a President from office through a simple vote of "no confidence." Schlesinger sets out to demolish this idea—but only by attributing to it features that it need not have. He assumes that a power in Congress to vote "no confidence" would carry with it, as in Britain, a power in the executive to dissolve the legislature, and then argues that the latter power "would play into the hands of the executive." Obviously it would. But the leading proposal currently before Congress for a "no-confidence" procedure in the United States, introduced by Rep. Henry Reuss of Wisconsin, does not include any presidential power to dissolve the Congress. It provides only that Congress may, by a "Resolution of No Confidence in the President" adopted by 60 percent of each house, call a new presidential election after not less than 90 days. Congress would be dissolved and all seats filled at the same election—so that the congressional action would be submitted, in effect, to a referendum—but the initiative would lie exclusively with Congress.

Let us begin by discarding the notion that, since a President has just been forced out of office, the question of presidential removal has become moot.

Nixon resigned only when it became unmistakably clear to him that if he did not leave office voluntarily he would do so involuntarily: impeached and found guilty of "high crimes and misdemeanors." But as late as three days before the resignation speech it was not at all apparent that two-thirds of the Senate would convict a President without irrefutable evidence that he had personally committed, while in office, an indictable felony. Then the evidence was discovered.

There had never been any doubt that the impeachment clause of the Constitution covered this narrow category of offenses. The question was whether the clause was broader than that. In the end that would have been decided by a minority of one-third plus one of the Senate—the number necessary to sustain the President in office and hence that number who would have set the outer limits of the impeachment power. We will never know what those limits would have been.

In any event a no-confidence procedure would make it possible to remove a President under four kinds of circumstances, beyond the one where the President is caught in personal criminal conduct. The first two of these may or may not be included in the present impeachment power. The other two are unquestionably outside it. They are:

1) *Crimes not directly traceable to the President personally.* Before the discovery of the final tape that implicated President Nixon personally and inextricably in the crime of obstructing justice, the House Judiciary Committee had to build a circumstantial case that the President *must* have been personally involved for so clear and consistent a pattern of obstruction to have been pursued by his closest associates and subordinates. Yet the White House and a majority of the President's party on the committee did not agree that a circumstantial case could meet the constitutional test for impeachment, and the constitutional issue remains unsettled.

2) *Abuse of power.* The Judiciary Committee concluded that a President can be impeached for "abuse of power" apart from the question of indictable crime, but again

a substantial minority did not concur and again the issue is unresolved.

3) *Mental or emotional breakdown.* The 25th Amendment allows the Vice President and the cabinet, with the assent of Congress, to declare a President incapable of fulfilling his duties. This power may be easy to exercise in a clear case of physical incapacitation—a stroke or heart attack for instance. But in case of a mental or emotional disability, short of obvious insanity, it is difficult to conceive of the Vice President and a majority of the cabinet—all the President's men, selected by him (and the cabinet members removable by him)—taking the unprecedentedly bold step of initiating a President's removal.

The presidency is the country's symbol of solidity and certitude, and so one shrinks from even admitting the possibility that a President might go gradually and quietly mad. But the contingency ought to be realistically faced. Under immeasurably less severe stress than that to which a President is daily subjected, men have "nervous breakdowns" of one type or another. A President can lose some of his grip on reality, suffer delusions of grandeur or persecution, become impulsive or obsessive and erratic in his judgments, and conduct himself in eccentric ways that are harmless enough in the ordinary citizen but unacceptably risky in his high office. It *could* happen. It has happened to the prime ministers of other countries and to governors, members of Congress and cabinet officers. The possibility has been a hazard since the founding of the Republic, but today the need for assurance that the "finger on the button" is steady becomes more compelling.

4) *Loss of public confidence.* A President who is sound in health and innocent of any crime or abuse of power may still lose the public confidence to the point where he can no longer lead and govern. He may simply lack capacity to handle a domestic or a foreign crisis. He may make policy decisions that visit disaster upon the country, and then stick with those decisions after the consequences have become clear. He may be egregiously bad in the selection of people in whom he imposes trust, and retain advisers and subordinates after their incapacity has been exposed. The list is endless. Anyone who has studied the careers of some recent Presidents who lost the public confidence—Hoover, Truman, Johnson, Nixon—can easily add to it.

The "no-confidence" proposal rests upon the premise that the United States needs at all times an effective government, that it cannot afford to wait for as long as three years or more if its President loses his ability to lead and inspire and unify the country—as he must. The people need to be safeguarded not just against the President who commits crime but against the one who tolerates and excuses crime, the one who is incompetent or negligent or rash, the one who loses his capacity to make sound judgments. For all these kinds of circumstances, short of obvious incapacitation, the Constitution provides no remedy.

Schlesinger argues that if a no-confidence procedure had been in our Constitution, Presidents might have been deposed for taking policy stands that were at the time unpopular but, in the eyes of history, proved to be right—John Adams for refusing to go to war with France, for instance, and Harry Truman for firing Gen. MacArthur. Perhaps so. But democratic systems are predicated on the proposition that decisions made in a considered fashion by popular majorities are more likely to be right than wrong, and so the gains of popular control outweigh the losses. A no-confidence procedure, let us remind ourselves, would have permitted the removal not just of Truman but of Herbert Hoover and Lyndon Johnson, both incapacitated as leaders well before their terms expired, and of Richard Nixon sooner and with far less national agony. If one had to choose between losing any two or three of those before their time, and losing none, I suggest the national interest would commend the first alternative. However right Truman was in the MacArthur matter and however much later generations may admire him, he did not possess much capacity to lead the nation in his last two years. Vice President Alben Barkley as a caretaker President for a few months pending an election, would probably have done as well. Moreover if Truman had chosen to fight the congressional decision and seek vindication in the new election, he could have done so. And it is not at all unlikely that the Congress, recalling vividly how he had campaigned successfully against that body in 1948, would itself have backed away from a showdown and let the President finish out his term.

The mere existence of a no-confidence procedure would have a continuous—and, on the whole, beneficial—restraining influence on what Schlesinger himself has called "the imperial presidency." The effect would be to bring the President into closer consultation with the Congress that held the ultimate power over him. To keep its confidence he would have to take its leaders into his. He could not hide from them essential information, or abuse his powers and then defy them to do anything about it. He would have to make sure, through consultation in advance, that major decisions met with their concurrence. This would restrain his individual power to do great deeds both good and ill. But those who reflect upon the headstrong acts of recent Presidents taken without consultation outside their immediate, sycophantic circles of advisers may well conclude that more bad deeds than good ones would be forestalled by the kind of collective leadership that a degree of enforced collaboration would bring about.

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# Lecture
## By James L. Sundquist
## Delivered at the Maxwell School of Citizenship and Public Affairs, Syracuse University
## May 6, 1974

One school of thought says, nothing much has to be done (about the Presidency). The Nation will have learned great lessons from Vietnam and Watergate. No President for a long time will dare to embark on any such headstrong foreign adventures as Lyndon Johnson did. No President will be so careless in choosing subordinates as Richard Nixon was, or so lax in supervising them. The elements of the bureaucracy that stood up well against the presidency will stand up even better next time. Besides, any remedy might make things a good deal worse, because—to put the shoe on the other foot—if we restrain the President's power to do bad things we also restrain his power to do good things.

In other words, we were right all the time when we aggrandized the power of the President. The nation does need a strong President, for all of the reasons given by public administrators and political scientists for forty years. If we believe in liberal causes, let us not get so excited by the clamor of the moment that we impair the instrument that we rightly and wisely saw was necessary for our purposes. This was basically the conclusion of the National Academy of Public Administration's distinguished panel on the implications of Watergate. Clean the system up a bit around the edges, they suggested, but don't attempt any fundamental constitutional change.

Maybe all we do at this point is separate the optimists from the pessimists. Some look back at the checkered history of our century and see the sunlit epochs—the two Roosevelts, Kennedy, Johnson in his early years—and look ahead to more. Others look back and see the shadowed periods—Hoover, Johnson after 1965, Nixon—and fear what may come next. I confess that the last nine years have made me reluctant to trust entirely to luck. There is so much risk—given our selection system—of putting the wrong man in the White House that I would like to find some means of forcing upon our chief executive some of the restraints of collective decision-making that in this country we routinely insist upon in lesser organizations.

There is something about the White House, as George Reedy has suggested more clearly than anyone else, that can bring out latent traits of megalomania in any human being who finds himself there. Let's face it: it is not inconceivable that a President could become mentally or emotionally unstable while in office—as has happened to the heads of other governments—yet not be removable for disability nor guilty of impeachable crime.

Another school of thought looks at all that concentrated power, is scared like me, but looks in the direction of taking some of it away. All kinds of proposals are heard: Give power back to the Congress, elect the key members of the Cabinet, take certain sensitive agencies such as the Department of Justice out of the executive branch, limit by law the size of the White House staff, and so on. A few of these proposals—a permanent independent prosecutor, for instance—may have merit, but, generally speaking, most of these proposals seem to me to move in the wrong direction. You may not believe it, from all I have said, but I agree that all along we of the public administration fraternity have been right in our arguments for a powerful presidency.

Governmental functions do not need to be directed and coordinated from a single point of leadership. There does need to be "command and control," in Bill Carey's words, so that within limits set by law there can be worked out a coordinated economic policy, a comprehensive energy policy, a coherent national growth policy, a military policy and a foreign policy and a food policy consistent with one another, a coordinated system of intergovernmental relations, and all the rest. If the functions of the executive branch were to be scattered among persons of independent authority, we would give up any chance of the government's making sense with what it tried to do, and the cry would immediately rise: Give the President the authority to make order out of this shambles.

I would go so far as to endorse some additional powers for the President—like giving him clear control over the personnel management functions of the Civil Service Commission (as distinct from its inspection and policing functions) and over the activities of the Federal Reserve Board, which now has the authority to pursue a monetary policy that can cancel the President's fiscal policy and thus prevent the government from having any effective economic policy at all, and the power to raise and lower tax rates, within limits, for fiscal policy purposes. In short, there is no substitute for the powerful presidency in this complex modern world for all the reasons public administrators have given from Gulick and Brownlow to the present time.

But—and this is all-important—a powerful presidency under equally powerful control. That leads me in a third direction. Instead of trying to reduce the presidential power, I would try to find a way to embody the folk wisdom of the ages into the executive branch of the government by pluralizing that power in its exercise. In other words, by establishing institutions that would have the effect of forcing the President into some kind of collective process in making major national decisions.

Where are the people of independent stature with whom the President can be forced to consult? Not the Cabinet, obviously; a President cannot be required to appoint strong men to his Cabinet, or to let his Cabinet restrain him.

The only possible answer, I believe, is to bring the President into a closer relationship with the Congress—which, of course, means the elected leaders of the Congress. They are the only people around, apart from the President and Vice President, who are elected, and hence who have any independent power base at all. But to force the President into a closer relationship with Congress would closely require some additional sanctions in the hands of Congress—so that he could not longer just ignore its leaders or defy them, as he does now.

I think that sanction has to take the form of a simpler way of removing presidents. That object would serve a double purpose. First, it is a necessary end in itself, for the reasons I indicated earlier when I talked about the limitations of the courts and of the impeachment process.

It does not take high crimes or misdemeanors to destroy the capacity of a President to lead and inspire and unify the country, as he must. Misfeasance that is not malfeasance in the impeachable sense can fatally impair the presidency. The people need to be safeguarded not just against the President who commits or tolerates crime but against the one who is incompetent, or negligent, or rash, against the one who loses his stability, his capacity to make sound judgments—in the vernacular, loses his marbles—but who is not so obviously disabled that he can be removed for disability under the Twenty-fifth Amendment.

If you start from the proposition that the United States needs at all times an effective government, that it cannot afford to wait for as long as three or three and a half years if its president is wholly discredited and hence loses his ability to lead and govern, that it needs under such circumstances to be able, as James Reston put it the other day, in another context, to "sweep away the poisonous atmosphere of the country" and start afresh, then you have to conclude that the present removal process is too limited. That is the first reason for making the process somewhat easier.

The second reason is the one I have been discussing, to bring the President into closer consultation with the Congress. If the Congress had a greater discretion in removing Presidents, he would have to keep its confidence. And to keep its confidence, he would have to take its leaders into his. He could not hide from them essential information. He could not abuse his powers and then defy them to do anything about it. He would have to make sure, through consultation in advance, that major decisions met with their concurrence.

And an incidental benefit would be that the Congress would find it necessary to invoke a higher degree of discipline internally. The members would have to repose more power in their leaders whose job it would be to contain and restrain the runaway presidency and in turn to hold those leaders effectively accountable. All this, I admit, is conjectural, because one never knows how any reform will actually work out in practice, but its effect would surely be in these directions.

The problem is to strike exactly the right balance in making presidential removal easier. We certainly do not want to destabilize the Presidency too much. Nobody wants a system like the Third Republic of France, or even the Italian republic today, where prime ministers are turned out of office every year or two, or even every few months—revolving door governments, they're called. The British system comes closest to the model; their prime ministers normally serve their full five-year term, but when a prime minister botches his job, when he "goofs up" and loses the confidence of the country—and hence of the House of Commons and its governing majority—the majority does have means to force him out and get the country off to a fresh start under a leader who can lead and a government that can govern. This happened after Narvik, when Neville Chamberlain was forced to give way to Winston Churchill, and again after Suez, when Anthony Eden was persuaded by his colleagues to step down. Under our system, a Neville Chamberlain would stay in his office for his full term even if that meant losing a war and the very freedom of the nation.

Several types of constitutional amendments to ease the removal process have been suggested. One idea is just to broaden the impeachment clause—by adding after the phrase "high crimes and misdemeanors" five little words, "or for any other reason." In other words, removal would become a political rather than a juridical type of action, taken through a "no confidence" vote, as in the parliamentary countries. But under this amendment two-thirds of the Senate would still be required to remove the chief executive, and that seems to me to embody the wrong principle. To govern effectively, a president needs to sustain the confidence of the majority of the country and of the legislature, not just a one-third plus one minority.

A proposal by Congressman Bingham runs into the same objection. He would empower the Congress by law to call a new presidential election at any time. This is somewhat like the recall provisions of some state constitutions, except there the recall is initiated by petition of a specified number of voters. But the Bingham proposal to act by statute would require a two-thirds vote of both houses, in order to override the inevitable presidential veto.

Congressman Reuss has tried to meet the objection to the two-thirds requirement by providing for a "no confidence" removal by sixty percent of both houses. But that still violates the majority principle while at the same time probably making removal too easy. Sometimes the opposition party in the Congress by itself has a sixty percent majority.

My favorite approach, therefore, is this: Empower Congress to act by a simple majority to remove the President and call a new election. But to deter the Congress from acting for trivial or fractious reasons requires that the Congress upon removing the President itself be dissolved and all its members forced to face a new election. They would have to take their decision, in effect, to a referendum. That would surely be a very great restraint upon the exercise of the congressional prerogative. Perhaps it would be too great. A former senator has written me that the reform I propose would be quite useless; he could not conceive of any circumstance in which the members of the Senate would voluntarily subject themselves to an election when they did not have to. Maybe he's right, but I suspect he's too pessimistic.

If the public were aroused—and that is the only circumstance in which the procedure would even be considered, or should be—a senator would have to think twice about basing his vote simply upon his own personal convenience. But in any case, I would prefer to err on the side of making the procedure an unattractive one. The important thing is that the procedure be available to a national majority as expressed through its representatives—available as a last resort, to be sure, but nevertheless available to be used when it is absolutely, and incontrovertibly, necessary.

Perhaps better ideas will be heard as this whole problem is considered. The most important thing, I think, is that the country being talking seriously about the question of what should be done about the presidency. It possesses an awesome concentration of power, and the events of the last nine years have shown that it is a power that, if the President is so minded, can be exercised virtually without restraint. I am afraid simply to leave the presidency as it is, and trust to luck. But neither do I want to see it dismantled. The profession and discipline of public administration, whose doctrines have contributed so much to putting all that power in the presidency, has been basically right all along in its reasons for creating such an office. But now, having done so, it needs to put its attention to how all that power can be hedged in with the kind of restraints that we try to make sure exist in every other human organization."

Proposed Constitutional Amendment relative to unbought elections I

97TH CONGRESS
2D SESSION

# H. J. RES. 525

Proposing an amendment to the Constitution of the United States relative to unbought elections.

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IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 1982

Mr. REUSS introduced the following joint resolution; which was referred to the Committee on the Judiciary

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# JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relative to unbought elections.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),* That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date of final passage of this joint resolution:

"ARTICLE —

"The Congress may enact laws regulating the amounts of contributions and expenditures intended to affect congressional elections.".

Proposed Constitutional Amendment relative to contributions and expenditures intended to affect Congressional, Presidential and State elections I

97TH CONGRESS
2D SESSION

# H. J. RES. 628

Proposing an amendment to the Constitution of the United States relative to contributions and expenditures intended to affect Congressional, Presidential, and State elections.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 1982

Mr. BINGHAM (for himself, Mr. REUSS, Mrs. FENWICK, Mr. BEVILL, Mr. DONNELLY, Mr. D'AMOURS, Mr. EDGAR, Mr. LAFALCE, Ms. MIKULSKI, Mr. RANGEL, Mr. VENTO, Mr. WEISS, and Mr. WOLPE) introduced the following joint resolution; which was referred to the Committee on the Judiciary

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# JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relative to contributions and expenditures intended to affect Congressional, Presidential, and State elections.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein),* That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date of final passage of this joint resolution:

"ARTICLE —

"SECTION 1. The Congress may enact laws regulating the amounts of contributions and expenditures intended to affect elections to Federal offices.

"SECTION 2. The several States may enact laws regulating the amounts of contributions and expenditures intended to affect elections to State and local offices.".

JK 1991

# CASES ADJUDGED
IN THE
# SUPREME COURT OF THE UNITED STATES
AT
## OCTOBER TERM, 1975

## BUCKLEY ET AL. *v.* VALEO, SECRETARY OF THE UNITED STATES SENATE, ET AL.

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 75-436. Argued November 10, 1975—Decided January 30, 1976*

The Federal Election Campaign Act of 1971 (Act), as amended in 1974, (a) limits political contributions to candidates for federal elective office by an individual or a group to $1,000 and by a political committee to $5,000 to any single candidate per election, with an overall annual limitation of $25,000 by an individual contributor; (b) limits expenditures by individuals or groups "relative to a clearly identified candidate" to $1,000 per candidate per election, and by a candidate from his personal or family funds to various specified annual amounts depending upon the federal office sought, and restricts overall general election and primary campaign expenditures by candidates to various specified amounts, again depending upon the federal office sought; (c) requires political committees to keep detailed records of contributions and expenditures, including the name and address of each individual contributing in excess of $10, and his occupation and

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*Together with No. 75-437, *Buckley et al.* v. *Valeo, Secretary of the United States Senate, et al.*, on appeal from the United Stat District Court for the District of Columbia.

principal place of business if his contribution exceeds $100, and to file quarterly reports with the Federal Election Commission disclosing the source of every contribution exceeding $100 and the recipient and purpose of every expenditure over $100, and also requires every individual or group, other than a candidate or political committee, making contributions or expenditures exceeding $100 "other than by contribution to a political committee or candidate" to file a statement with the Commission; and (d) creates the eight-member Commission as the administering agency with recordkeeping, disclosure, and investigatory functions and extensive rulemaking, adjudicatory, and enforcement powers, and consisting of two members appointed by the President *pro tempore* of the Senate, two by the Speaker of the House, and two by the President (all subject to confirmation by both Houses of Congress), and the Secretary of the Senate and the Clerk of the House as *ex officio* nonvoting members. Subtitle H of the Internal Revenue Code of 1954 (IRC), as amended in 1974, provides for public financing of Presidential nominating conventions and general election and primary campaigns from general revenues and allocates such funding to conventions and general election campaigns by establishing three categories: (1) "major" parties (those whose candidate received 25% or more of the vote in the most recent election), which receive full funding; (2) "minor" parties (those whose candidate received at least 5% but less than 25% of the votes at the last election), which receive only a percentage of the funds to which the major parties are entitled; and (3) "new" parties (all other parties), which are limited to receipt of post-election funds or are not entitled to any funds if their candidate receives less than 5% of the vote. A primary candidate for the Presidential nomination by a political party who receives more than $5,000 from private sources (counting only the first $250 of each contribution) in each of at least 20 States is eligible for matching public funds. Appellants (various federal officeholders and candidates, supporting political organizations, and others) brought suit against appellees (the Secretary of the Senate, Clerk of the House, Comptroller General, Attorney General, and the Commission) seeking declaratory and injunctive relief against the above statutory provisions on various constitutional grounds. The Court of Appeals, on certified questions from the District Court, upheld all but one of the statutory provisions. A three-judge District Court upheld the constitutionality of Subtitle H. *Held:*

1. This litigation presents an Art. III "case or controversy," since the complaint discloses that at least some of the appellants have a sufficient "personal stake" in a determination of the constitutional validity of each of the challenged provisions to present "a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." *Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227, 241. Pp. 11–12.

2. The Act's contribution provisions are constitutional, but the expenditure provisions violate the First Amendment. Pp. 12–59.

(a) The contribution provisions, along with those covering disclosure, are appropriate legislative weapons against the reality or appearance of improper influence stemming from the dependence of candidates on large campaign contributions, and the ceilings imposed accordingly serve the basic governmental interest in safeguarding the integrity of the electoral process without directly impinging upon the rights of individual citizens and candidates to engage in political debate and discussion. Pp. 23–38.

(b) The First Amendment requires the invalidation of the Act's independent expenditure ceiling, its limitation on a candidate's expenditures from his own personal funds, and its ceilings on overall campaign expenditures, since those provisions place substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate. Pp. 39–59.

3. The Act's disclosure and recordkeeping provisions are constitutional. Pp. 60–84.

(a) The general disclosure provisions, which serve substantial governmental interests in informing the electorate and preventing the corruption of the political process, are not overbroad insofar as they apply to contributions to minor parties and independent candidates. No blanket exemption for minor parties is warranted since such parties in order to prove injury as a result of application to them of the disclosure provisions need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals in violation of their First Amendment associational rights. Pp. 64–74.

(b) The provision for disclosure by those who make independent contributions and expenditures, as narrowly construed to apply only (1) when they make contributions earmarked for political purposes or authorized or requested by a candidate or his agent to some person other than a candidate or political committee and (2) when they make an expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate is not unconstitutionally vague and does not constitute a prior restraint but is a reasonable and minimally restrictive method of furthering First Amendment values by public exposure of the federal election system. Pp. 74–82.

(c) The extension of the recordkeeping provisions to contributions as small as those just above $10 and the disclosure provisions to contributions above $100 is not on this record overbroad since it cannot be said to be unrelated to the informational and enforcement goals of the legislation. Pp. 82–84.

4. Subtitle H of the IRC is constitutional. Pp. 85–109.

(a) Subtitle H is not invalid under the General Welfare Clause but, as a means to reform the electoral process, was clearly a choice within the power granted to Congress by the Clause to decide which expenditures will promote the general welfare. Pp. 90–92.

(b) Nor does Subtitle H violate the First Amendment. Rather than abridging, restricting, or censoring speech, it represents an effort to use public money to facilitate and enlarge public discussion and participation in the electoral process. Pp. 92–93.

(c) Subtitle H, being less burdensome than ballot-access regulations and having been enacted in furtherance of vital governmental interests in relieving major-party candidates from the rigors of soliciting private contributions, in not funding candidates who lack significant public support, and in eliminating reliance on large private contributions for funding of conventions and campaigns, does not invidiously discriminate against minor and new parties in violation of the Due Process Clause of the Fifth Amendment. Pp. 93–108.

(d) Invalidation of the spending-limit provisions of the Act does not render Subtitle H unconstitutional, but the Subtitle is severable from such provisions and is not dependent upon the existence of a generally applicable expenditure limit. Pp. 108–109.

5. The Commission's composition as to all but its investigative and informative powers violates Art. II, § 2, cl. 2. With respect to the Commission's powers, all of which are ripe for review,

to enforce the Act, including primary responsibility for bringing civil actions against violators, to make rules for carrying out the Act, to temporarily disqualify federal candidates for failing to file required reports, and to authorize convention expenditures in excess of the specified limits, the provisions of the Act vesting such powers in the Commission and the prescribed method of appointment of members of the Commission to the extent that a majority of the voting members are appointed by the President *pro tempore* of the Senate and the Speaker of the House, violate the Appointments Clause, which provides in pertinent part that the President shall nominate, and with the Senate's advice and consent appoint, all "Officers of the United States," whose appointments are not otherwise provided for, but that Congress may vest the appointment of such inferior officers, as it deems proper, in the President alone, in the courts, or in the heads of departments. Hence (though the Commission's past acts are accorded *de facto* validity and a stay is granted permitting it to function under the Act for not more than 30 days), the Commission, as presently constituted, may not because of that Clause exercise such powers, which can be exercised only by "Officers of the United States" appointed in conformity with the Appointments Clause, although it may exercise such investigative and informative powers as are in the same category as those powers that Congress might delegate to one of its own committees. Pp. 109–143.

No. 75–436, — U. S. App. D. C. —, 519 F. 2d 821, affirmed in part and reversed in part; No. 75–437, 401 F. Supp. 1235, affirmed.

*Per curiam* opinion, in the "case or controversy" part of which (*post*, pp. 11–12) all participating Members joined; and as to the other portions of which BRENNAN, STEWART, and POWELL, JJ., joined in all Parts; MARSHALL, J., joined in all but Part I–C–2; BLACKMUN, J., joined in all but Part I–B; REHNQUIST, J., joined in all but Part III–B–1; BURGER, C. J., joined in Parts I–C and IV (except insofar as it accords *de facto* validity for the Commission's past acts); and WHITE, J., joined in Part III. BURGER, C. J., *post*, p. 235, WHITE, J., *post*, p. 257, MARSHALL, J., *post*, p. 280, BLACKMUN, J., *post*, p. 290, and REHNQUIST, J., *post*, p. 290, filed opinions concurring in part and dissenting in part. STEVENS, J., took no part in the consideration or decision of the cases.

*Ralph K. Winter, Jr., pro hac vice, Joel M. Gora,* and

### C. Expenditure Limitations

The Act's expenditure ceilings impose direct and substantial restraints on the quantity of political speech. The most drastic of the limitations restricts individuals and groups, including political parties that fail to place a candidate on the ballot,[44] to an expenditure of $1,000 "relative to a clearly identified candidate during a calendar year." § 608 (e)(1). Other expenditure ceilings limit spending by candidates, § 608 (a), their campaigns, § 608 (c), and political parties in connection with election campaigns, § 608 (f). It is clear that a primary effect of these expenditure limitations is to restrict the quantity of campaign speech by individuals, groups, and candidates. The restrictions, while neutral as to the ideas expressed, limit political expression "at the core of our electoral process and of the First Amendment freedoms." *Williams* v. *Rhodes*, 393 U. S. 23, 32 (1968).

#### 1. The $1,000 Limitation on Expenditures "Relative to a Clearly Identified Candidate"

Section 608 (e)(1) provides that "[n]o person may make any expenditure . . . relative to a clearly identified candidate during a calendar year which, when added to all other expenditures made by such person during the year advocating the election or defeat of such candidate, exceeds $1,000."[45] The plain effect of § 608 (e)(1) is to prohibit all individuals, who are neither candidates nor owners of institutional press facilities, and all groups, except political parties and campaign organizations, from voicing their views "relative to a clearly identified candidate" through means that entail aggregate expenditures of more than $1,000 during a calendar year. The provision, for example, would make it a federal criminal offense for a person or association to place a single one-quarter page advertisement "relative to a clearly identified candidate" in a major metropolitan newspaper.[46]

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[44] See n. 19, *supra*.

[45] The same broad definition of "person" applicable to the contribution limitations governs the meaning of "person" in § 608 (e)(1). The statute provides some limited exceptions through various exclusions from the otherwise comprehensive definition of "expenditure." See § 591 (f). The most important exclusions are: (1) "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate," § 591 (f)(4)

Before examining the interests advanced in support of § 608 (e)(1)'s expenditure ceiling, consideration must be given to appellants' contention that the provision is unconstitutionally vague.[47] Close examination of the

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(A), and (2) "any communication by any membership organization or corporation to its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any person to Federal office," § 591 (f)(4)(C). In addition, the Act sets substantially higher limits for personal expenditures by a candidate in connection with his own campaign, § 608 (a), expenditures by national and state committees of political parties that succeed in placing a candidate on the ballot, §§ 591 (i), 608 (f), and total campaign expenditures by candidates, § 608 (c).

[46] Section 608 (i) provides that any person convicted of exceeding any of the contribution or expenditure limitations "shall be fined not more than $25,000 or imprisoned not more than one year, or both."

[47] Several of the parties have suggested that problems of ambiguity regarding the application of § 608 (e)(1) to specific campaign speech could be handled by requesting advisory opinions from the Commission. While a comprehensive series of advisory opinions or a rule delineating what expenditures are "relative to a clearly identified candidate" might alleviate the provision's vagueness problems, reliance on the Commission is unacceptable because the vast majority of individuals and groups subject to criminal sanctions for violating § 608 (e)(1) do not have a right to obtain an advisory opinion from the Commission. See 2 U. S. C. § 437f (1970 ed., Supp. IV). Section 437f (a) of Title 2 accords only candidates, federal

specificity of the statutory limitation is required where, as here, the legislation imposes criminal penalties in an area permeated by First Amendment interests. See *Smith* v. *Goguen*, 415 U. S. 566, 573 (1974); *Cramp* v. *Board of Public Instruction*, 368 U. S. 278, 287-288 (1961); *Smith* v. *California*, 361 U. S. 147, 151 (1959).[48] The test is whether the language of § 608 (e)(1) affords the "[p]recision of regulation [that] must be the touchstone in an area so closely touching our most precious freedoms." *NAACP* v. *Button*, 371 U. S., at 438.

The key operative language of the provision limits "any expenditure . . . relative to a clearly identified candidate." Although "expenditure," "clearly identified," and "candidate" are defined in the Act, there is no definition clarifying what expenditures are "relative to" a candidate. The use of so indefinite a phrase as "relative to" a candidate fails to clearly mark the boundary between permissible and impermissible speech, unless other portions of § 608 (e)(1) make sufficiently explicit the range of expendi-

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officeholders, and political committees the right to request advisory opinions and directs that the Commission "shall render an advisory opinion, in writing, within a reasonable time" concerning specific planned activities or transactions of any such individual or committee. The powers delegated to the Commission thus do not assure that the vagueness concerns will be remedied prior to the chilling of political discussion by individuals and groups in this or future election years.

[48] In such circumstances, vague laws may not only "trap the innocent by not providing fair warning" or foster "arbitrary and discriminatory application" but also operate to inhibit protected expression by inducing "citizens to 'steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked.'" *Grayned* v. *City of Rockford*, 408 U. S. 104, 108-109 (1972), quoting *Baggett* v. *Bullitt*, 377 U. S. 360, 372 (1964), quoting *Speiser* v. *Randall*, 357 U. S. 513, 526 (1958). "Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *NAACP* v. *Button*, 371 U. S. 415, 433 (1963).

tures covered by the limitation. The section prohibits "any expenditure . . . relative to a clearly identified candidate during a calendar year which, *when added to all other expenditures . . . advocating the election or defeat of such candidate*, exceeds $1,000." (Emphasis added.) This context clearly permits, if indeed it does not require, the phrase "relative to" a candidate to be read to mean "advocating the election or defeat of" a candidate.[49]

But while such a construction of § 608 (e)(1) refocuses the vagueness question, the Court of Appeals was mistaken in thinking that this construction eliminates the problem of unconstitutional vagueness altogether. — U. S. App. D. C., at —, 519 F. 2d, at 853. For the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest.[50] In an analogous context, this Court in *Thomas* v. *Collins*, 323 U. S. 516 (1945), observed:

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[49] This interpretation of "relative to" a clearly identified candidate is supported by the discussion of § 608 (e)(1) in the Senate Report, S. Rep. No. 93-689, p. 19 (1974), the House Report, H. R. Rep. No. 93-1239, p. 7 (1974), the Conference Report, S. Conf. Rep. No. 93-1237, pp. 56-57 (1974), and the opinion of the Court of Appeals, — U. S. App. D. C., at —, 519 F. 2d, at 852-853.

[50] In connection with another provision containing the same advocacy language appearing in § 608 (e)(1), the Court of Appeals concluded:

"Public discussion of public issues which also are campaign issues readily and often unavoidably draws in candidates and their positions, their voting records and other official conduct. Discussions of those issues, and as well more positive efforts to influence public opinion on them, tend naturally and inexorably to exert some influence on voting at elections." — U. S. App. D. C., at —, 519 F. 2d, at 875.

> "[W]hether words intended and designed to fall short of invitation would miss that mark is a question both of intent and of effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning.
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> "Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim." *Id.*, at 535.

See also *United States* v. *Auto. Workers*, 352 U. S. 567, 595-596 (1957) (Douglas, J., dissenting); *Gitlow* v. *New York*, 268 U. S. 652, 673 (1925) (Holmes, J., dissenting).

The constitutional deficiencies described in *Thomas* v. *Collins* can be avoided only by reading § 608 (e)(1) as limited to communications that include explicit words of advocacy of election or defeat of a candidate, much as the definition of "clearly identified" in § 608 (e)(2) requires that an explicit and unambiguous reference to the candidate appear as part of the communication.[51] This is the reading of the provision suggested by the non-governmental appellees in arguing that "[f]unds spent to propagate one's views on issues without expressly calling for a candidate's election or defeat are thus not covered." We agree that in order to preserve the provision against invalidation on vagueness grounds, § 608 (e)(1) must be construed to apply only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office.[52]

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[51] Section 608 (e)(2) defines "clearly identified" to require that the candidate's name, photograph or drawing, or other unambiguous reference to his identity appear as part of the communication. Such other unambiguous reference would include use of the candidate's initials (*e. g.*, FDR), the candidate's nickname (*e. g.*, Ike), his office (*e. g.*, the President or the Governor of Iowa), or his status as a

We turn then to the basic First Amendment question—whether § 608 (e)(1), even as thus narrowly and explicitly construed, impermissibly burdens the constitutional right of free expression. The Court of Appeals summarily held the provision constitutionally valid on the ground that "section 608 (e) is a loophole-closing provision only" that is necessary to prevent circumvention of the contribution limitations. — U. S. App. D. C., at —, 519 F. 2d, at 853. We cannot agree.

The discussion in Part I-A, *supra*, explains why the Act's expenditure limitations impose far greater restraints on the freedom of speech and association than do its contribution limitations. The markedly greater burden on basic freedoms caused by § 608 (e)(1) thus cannot be sustained simply by invoking the interest in maximizing the effectiveness of the less intrusive contribution limitations. Rather, the constitutionality of § 608 (e)(1) turns on whether the governmental interests advanced in its support satisfy the exacting scrutiny applicable to limita-

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candidate (*e. g.*, the Democratic Presidential nominee, the senatorial candidate of the Republican Party of Georgia).

[52] This construction would restrict the application of § 608 (e)(1) to communications containing express words of advocacy of election or defeat, such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "reject."

tions on core First Amendment rights of political expression.

We find that the governmental interest in preventing corruption and the appearance of corruption is inadequate to justify § 608 (e)(1)'s ceiling on independent expenditures. First, assuming, *arguendo*, that large independent expenditures pose the same dangers of actual or apparent *quid pro quo* arrangements as do large contributions, § 608 (e)(1) does not provide an answer that sufficiently relates to the elimination of those dangers. Unlike the contribution limitations' total ban on the giving of large amounts of money to candidates, § 608 (e)(1) prevents only some large expenditures. So long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views. The exacting interpretation of the statutory language necessary to avoid unconstitutional vagueness thus undermines the limitation's effectiveness as a loophole-closing provision by facilitating circumvention by those seeking to exert improper influence upon a candidate or officeholder. It would naively underestimate the ingenuity and resourcefulness of persons and groups desiring to buy influence to believe that they would have much difficulty devising expenditures that skirted the restriction on express advocacy of election or defeat but nevertheless benefited the candidate's campaign. Yet no substantial societal interest would be served by a loophole-closing provision designed to check corruption that permitted unscrupulous persons and organizations to expend unlimited sums of money in order to obtain improper influence over candidates for elective office. Cf. *Mills* v. *Alabama*, 384 U. S., at 220.

Second, quite apart from the shortcomings of § 608 (e)

(1) in preventing any abuses generated by large independent expenditures, the independent advocacy restricted by the provision does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions. The parties defending § 608 (e)(1) contend that it is necessary to prevent would-be contributors from avoiding the contribution limitations by the simple expedient of paying directly for media advertisements or for other portions of the candidate's campaign activities. They argue that expenditures controlled by or coordinated with the candidate and his campaign might well have virtually the same value to the candidate as a contribution and would pose similar dangers of abuse. Yet such controlled or coordinated expenditures are treated as contributions rather than expenditures under the Act.[53] Section 608 (b)'s

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[53] Section 608 (e)(1) does not apply to expenditures "on behalf of a candidate within the meaning of" § 608 (e)(2)(B). The latter subsection provides that expenditures "authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate" are to be treated as expenditures of the candidate and contributions by the person or group making the expenditure. The House and Senate Reports provide guidance in differentiating individual expenditures that are contributions and candidate expenditures under § 608 (e)(2)(B) from those treated as independent expenditures subject to the § 608 (e)(1) ceiling. The House Report speaks of independent expenditures as costs "incurred without the request or consent of a candidate or his agent." H. R. Rep. No. 93-1239, p. 6 (1974). The Senate Report addresses the issue in greater detail. It provides an example illustrating the distinction between "authorized or requested" expenditures excluded from § 608 (e)(1) and independent expenditures governed by § 608 (e)(1):

"[A] person might purchase billboard advertisements endorsing a candidate. If he does so completely on his own, and not at the request or suggestion of the candidate or his agent's [*sic*] that would constitute an 'independent expenditure on behalf of a candidate' contribution ceilings rather than § 608 (e)(1)'s independent expenditure limitation prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions. By contrast, § 608(e)(1) limits expenditures for express advocacy of candidates made totally independently of the candidate and his campaign. Unlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate. Rather than preventing circumvention of the contribution limitations, § 608 (e)(1) severely restricts all independent advocacy despite its substantially diminished potential for abuse.

While the independent expenditure ceiling thus fails to serve any substantial governmental interest in stemming

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under section 614 (c) of the bill. The person making the expenditure would have to report it as such.

"However, if the advertisement was placed in cooperation with the candidate's campaign organization, then the amount would constitute a gift by the supporter and an expenditure by the candidate—just as if there had been a direct contribution enabling the candidate to place the advertisement, himself. It would be so reported by both." S. Rep. No. 93-689, p. 18 (1974).

The Conference substitute adopted the provision of the Senate bill dealing with expenditures by any person "authorized or requested" to make an expenditure by the candidate or his agents. S. Conf. Rep. No. 93-1237, p. 55 (1974). In view of this legislative history and the purposes of the Act, we find that the "authorized or requested" standard of the Act operates to treat all expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate as contributions subject to the limitations set forth in § 608 (b).

the reality or appearance of corruption in the electoral process, it heavily burdens core First Amendment expression. For the First Amendment right to "'speak one's mind . . . on all public institutions'" includes the right to engage in "'vigorous advocacy' no less than 'abstract discussion.'" *New York Times Co.* v. *Sullivan*, 376 U. S., at 269, quoting *Bridges* v. *California*, 314 U. S. 252, 270 (1941), and *NAACP* v. *Button*, 371 U. S., at 429. Advocacy of the election or defeat of candidates for federal office is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation.[54]

It is argued, however, that the ancillary governmental interest in equalizing the relative ability of individuals and groups to influence the outcome of elections serves to justify the limitation on express advocacy of the election or defeat of candidates imposed by § 608 (e)(1)'s expenditure ceiling. But the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed "to secure 'the widest possible dissemination of information from diverse and antagonistic sources,'" and "'to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" *New York Times Co.* v. *Sullivan*, *supra*, at 266, 269, quoting *Associated Press* v. *United States*, 326 U. S. 1, 20 (1945), and *Roth* v. *United States*, 354 U. S., at 484. The First Amendment's protection against governmental abridgment of free expression cannot properly be made to depend on a person's financial ability to engage in public discussion. Cf. *Eastern R. Conf.* v. *Noerr Motors*, 365 U. S. 127, 139 (1961).[55]

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[54] Appellees mistakenly rely on this Court's decision in *CSC* v. *Letter Carriers*, as supporting § 608(e)(1)'s restriction on the spending of money to advocate the election or defeat of a particular candidate. In upholding the Hatch Act's broad restrictions on the associational freedoms of federal employees, the Court repeatedly emphasized the statutory provision and corresponding regulation permitting an employee to "'[e]xpress his opinion as an individual privately and publicly on political subjects and candidates.'" 413 U. S., at 579, quoting 5 CFR § 733.111 (a)(2). See 413 U. S., at 561, 568, 575–576. Although the Court "unhesitatingly" found that a statute prohibiting federal employees from engaging in a wide variety of "partisan political conduct" would "unquestionably be valid," it carefully declined to endorse provisions threatening political expression. See *id.*, at 556, 579–581. The Court did not rule on the constitutional questions presented by the regulations forbidding partisan campaign endorsements through the media and speechmaking to political gatherings because it found that these restrictions did not "make the statute substantially overbroad and so invalid on its face." *Id.*, at 581.

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[55] Neither the voting rights cases nor the Court's decision upholding the Federal Communications Commission's fairness doctrine lends support to appellees' position that the First Amendment permits Congress to abridge the rights of some persons to engage in political expression in order to enhance the relative voice of other segments of our society.

Cases invalidating governmentally imposed wealth restrictions on the right to vote or file as a candidate for public office rest on the conclusion that wealth "is not germane to one's ability to participate intelligently in the electoral process" and is therefore an insufficient basis on which to restrict a citizen's fundamental right to vote. *Harper* v. *Virginia Bd. of Elections*, 383 U. S. 663, 668 (1966). See *Lubin* v. *Panish*, 415 U. S. 709 (1974); *Bullock* v. *Carter*, 405 U. S. 134 (1972); *Phoenix* v. *Kolodziejski*, 399 U. S. 204 (1970). These voting cases and the reapportionment decisions serve to assure that citizens are accorded an equal right to vote for their representatives regardless of factors of wealth or geography. But the principles that underlie invalidation of governmentally imposed restrictions on the franchise do not justify governmentally imposed restrictions on political expression. Democracy depends on a well-informed electorate, not a citizenry legislatively limited in its ability to discuss and debate candidates and issues.

In *Red Lion Broadcasting Co.* v. *FCC*, 395 U. S. 367 (1969), the Court upheld the political-editorial and personal-attack portions of

The Court's decisions in *Mills* v. *Alabama*, 384 U. S. 214 (1966), and *Miami Herald Publishing Co.* v. *Tornillo*, 418 U. S. 241 (1974), held that legislative restrictions on advocacy of the election or defeat of political candidates are wholly at odds with the guarantees of the First Amendment. In *Mills*, the Court addressed the question whether "a State, consistently with the United States Constitution, can make it a crime for the editor of a daily newspaper to write and publish an editorial *on election day* urging people to vote a certain way on issues submitted to them." 384 U. S., at 215 (emphasis in original). We held that "no test of reasonableness can save [such] a state law from invalidation as a violation of the First Amendment." *Id.*, at 220. Yet the prohibition of election-day editorials invalidated in *Mills* is clearly a lesser intrusion on constitutional freedom than a $1,000 limitation on the amount of money any person or association can spend *during an entire election year* in advocating the election or defeat of a candidate for public office. More recently in *Tornillo*, the Court held that Florida could not constitutionally require a news-

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the Federal Communications Commission's fairness doctrine. That doctrine requires broadcast licensees to devote programing time to the discussion of controversial issues of public importance and to present both sides of such issues. *Red Lion* "makes clear that the broadcast media pose unique and special problems not present in the traditional free speech case," by demonstrating that "'it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish.'" *Columbia Broadcasting* v. *Democratic Comm.*, 412 U. S. 94, 101 (1973), quoting *Red Lion Broadcasting Co.*, *supra*, at 388. *Red Lion* therefore undercuts appellees' claim that § 608 (e)(1)'s limitations may permissibly restrict the First Amendment rights of individuals in this "traditional free speech case." Moreover, in contrast to the undeniable effect of § 608 (e)(1), the presumed effect of the fairness doctrine is one of "enhancing the volume and quality of coverage" of public issues. 395 U. S., at 393.

paper to make space available for a political candidate to reply to its criticism. Yet under the Florida statute, every newspaper was free to criticize any candidate as much as it pleased so long as it undertook the modest burden of printing his reply. See 418 U. S., at 256-257. The legislative restraint involved in *Tornillo* thus also pales in comparison to the limitations imposed by § 608 (e)(1).[66]

For the reasons stated, we conclude that § 608 (e)(1)'s independent expenditure limitation is unconstitutional under the First Amendment.

### 2. Limitation on Expenditures by Candidates from Personal or Family Resources

The Act also sets limits on expenditures by a candidate "from his personal funds, or the personal funds of his immediate family, in connection with his campaigns during any calendar year." § 608 (a)(1). These ceilings vary from $50,000 for Presidential or Vice Presidential candidates to $35,000 for senatorial candidates, and $25,000 for most candidates for the House of Representatives.[67]

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[66] The Act exempts most elements of the institutional press, limiting only expenditures by institutional press facilities that are owned or controlled by candidates and political parties. See § 591 (f)(4)(A). But, whatever differences there may be between the constitutional guarantees of a free press and of free speech, it is difficult to conceive of any principled basis upon which to distinguish § 608 (e)(1)'s limitations upon the public at large and similar limitations imposed upon the press specifically.

[67] The $35,000 ceiling on expenditures by candidates for the Senate also applies to candidates for the House of Representatives from States entitled to only one representative. § 608 (a)(1)(B). The Court of Appeals treated § 608 (a) as relaxing the $1,000-per-candidate contribution limitation imposed by § 608 (b)(1) so as to permit any member of the candidate's immediate family—spouse, child, grandparent, brother, sister, or spouse of such persons—to

The ceiling on personal expenditures by candidates on their own behalf, like the limitations on independent expenditures contained in § 608 (e)(1), imposes a substantial restraint on the ability of persons to engage in protected First Amendment expression.[59] The candidate, no less than any other person, has a First Amendment right to engage in the discussion of public issues and vigorously and tirelessly to advocate his own election and the election of other candidates. Indeed, it is of particular importance that candidates have the un-

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contribute up to the $25,000 overall annual contribution ceiling to the candidate. See — U. S. App. D. C., at —, 519 F. 2d, at 854. The Commission has recently adopted a similar interpretation of the provision. See Federal Election Commission, Advisory Opinion 1975–65 (Dec. 5, 1975), 40 Fed. Reg. 58393. However, both the Court of Appeals and the Commission apparently overlooked the Conference Report accompanying the final version of the Act which expressly provides for a contrary interpretation of § 608 (a):

"It is the intent of the conferees that members of the immediate family of any candidate shall be subject to the contribution limitations established by this legislation. If a candidate for the office of Senator, for example, already is in a position to exercise control over funds of a member of his immediate family before he becomes a candidate, then he could draw upon these funds up to the limit of $35,000. If, however, the candidate did not have access to or control over such funds at the time he became a candidate, the immediate family member would not be permitted to grant access or control to the candidate in amounts up to $35,000, if the immediate family member intends that such amounts are to be used in the campaign of the candidate. The immediate family member would be permitted merely to make contributions to the candidate in amounts not greater than $1,000 for each election involved." S. Conf. Rep. No. 93–1237, p. 58 (1974).

[59] The Court of Appeals evidently considered the personal funds expended by the candidate on his own behalf as a contribution rather than an expenditure. See — U. S. App. D. C., at —, 519 F. 2d, at 854. However, unlike a person's contribution to a candidate, a candidate's expenditure of his personal funds directly facilitates his own political speech.

fettered opportunity to make their views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on election day. Mr. Justice Brandeis' observation that in our country "public discussion is a political duty," *Whitney* v. *California*, 274 U. S. 357, 375 (1927) (concurring opinion), applies with special force to candidates for public office. Section 608 (a)'s ceiling on personal expenditures by a candidate in furtherance of his own candidacy thus clearly and directly interferes with constitutionally protected freedoms.

The primary governmental interest served by the Act—the prevention of actual and apparent corruption of the political process—does not support the limitation on the candidate's expenditure of his own personal funds. As the Court of Appeals concluded: "Manifestly, the core problem of avoiding undisclosed and undue influence on candidates from outside interests has lesser application when the monies involved come from the candidate himself or from his immediate family." — U. S. App. D. C., at —, 519 F. 2d, at 855. Indeed, the use of personal funds reduces the candidate's dependence on outside contributions and thereby counteracts the coercive pressures and attendant risks of abuse to which the Act's contribution limitations are directed.[59]

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[59] The legislative history of the Act clearly indicates that § 608 (a) was not intended to suspend the application of the $1,000 contribution limitation of § 608 (b)(1) for members of the candidate's immediate family. See n. 57, *supra*. Although the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as nonfamily contributors.

The limitation on a candidate's expenditure of his own funds differs markedly from a limitation on family contributions both in the absence of any threat of corruption and the presence of a legis-

The ancillary interest in equalizing the relative financial resources of candidates competing for elective office, therefore, provides the sole relevant rationale for § 608 (a)'s expenditure ceiling. That interest is clearly not sufficient to justify the provision's infringement of fundamental First Amendment rights. First, the limitation may fail to promote financial equality among candidates. A candidate who spends less of his personal resources on his campaign may nonetheless outspend his rival as a result of more successful fundraising efforts. Indeed, a candidate's personal wealth may impede his efforts to persuade others that he needs their financial contributions or volunteer efforts to conduct an effective campaign. Second, and more fundamentally, the First Amendment simply cannot tolerate § 608 (a)'s restriction upon the freedom of a candidate to speak without legislative limit on behalf of his own candidacy. We therefore hold that § 608 (a)'s restriction on a candidate's personal expenditures is unconstitutional.

3. Limitations on Campaign Expenditures

Section 608 (c) places limitations on overall campaign expenditures by candidates seeking nomination for election and election to federal office.[60] Presidential candidates may spend $10,000,000 in seeking nomination for office and an additional $20,000,000 in the general election campaign. §§ 608 (c)(1)(A), (B).[61]

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lative restriction on the candidate's ability to fund his own communication with the voters.

[60] Expenditures made by an authorized committee of the candidate or any other agent of the candidate as well as any expenditure by any other person that is "authorized or requested" by the candidate or his agent are charged against the candidate's spending ceiling. § 608 (c)(2)(B).

[61] Expenditures made by or on behalf of a Vice Presidential candidate of a political party are considered to have been made by or on behalf of the party's Presidential candidate. § 608 (c)(2)(A).

The ceiling on Senate campaigns is pegged to the size of the voting-age population of the State with minimum dollar amounts applicable to campaigns in States with small populations. In Senate primary elections, the limit is the greater of eight cents multiplied by the voting-age population or $100,000, and in the general election the limit is increased to 12 cents multiplied by the voting-age population or $150,000. §§608 (c)(1)(C), (D). The Act imposes blanket $70,000 limitations on both primary campaigns and general election campaigns for the House of Representatives with the exception that the Senate ceiling applies to campaigns in States entitled to only one Representative. §§ 608 (c)(1)(C)-(E). These ceilings are to be adjusted upwards at the beginning of each calendar year by the average percentage rise in the consumer price index for the 12 preceding months. § 608 (d).[a]

No governmental interest that has been suggested is sufficient to justify the restriction on the quantity of political expression imposed by § 608 (c)'s campaign expenditure limitations. The major evil associated with rapidly increasing campaign expenditures is the danger of candidate dependence on large contributions. The interest in alleviating the corrupting influence of large contributions is served by the Act's contribution limitations and disclosure provisions rather than by § 608 (c)'s campaign expenditure ceilings. The Court of Appeals' assertion that the expenditure restrictions are necessary to reduce the incentive to circumvent direct contribution limits is not persuasive. See — U. S.

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[a] The campaign ceilings contained in § 608 (c) would have required a reduction in the scope of a number of previous House and Senate campaigns and substantially limited the overall expenditures of the two major-party Presidential candidates in 1972. See n. 21, supra.

App. D. C., at —, 519 F. 2d, at 859. There is no indication that the substantial criminal penalties for violating the contribution ceilings combined with the political repercussion of such violations will be insufficient to police the contribution provisions. Extensive reporting, auditing, and disclosure requirements applicable to both contributions and expenditures by political campaigns are designed to facilitate the detection of illegal contributions. Moreover, as the Court of Appeals noted, the Act permits an officeholder or successful candidate to retain contributions in excess of the expenditure ceiling and to use these funds for "any other lawful purpose." 2 U. S. C. § 439a (1970 ed., Supp. IV). This provision undercuts whatever marginal role the expenditure limitations might otherwise play in enforcing the contribution ceilings.

The interest in equalizing the financial resources of candidates competing for federal office is no more convincing a justification for restricting the scope of federal election campaigns. Given the limitation on the size of outside contributions, the financial resources available to a candidate's campaign, like the number of volunteers recruited, will normally vary with the size and intensity of the candidate's support.[63] There is nothing invidious, improper, or unhealthy in permitting such funds to be spent to carry the candidate's message to the electorate.[64] Moreover, the equalization of permissible campaign expenditures might serve not to equalize the opportunities of all candidates but to handicap a candidate who lacked substantial name recognition or exposure of his views before the start of the campaign.

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[63] This normal relationship may not apply where the candidate devotes a large amount of his personal resources to his campaign.

[64] As the dissenting opinion in the Court of Appeals noted: "If a senatorial candidate can raise $1 from each voter, what evil is exacerbated by allowing that candidate to use all that money for political communication? I know of none." — U. S. App. D. C., at —, 519 F. 2d, at 917 (Tamm, J., concurring in part and dissenting in part).

The campaign expenditure ceilings appear to be designed primarily to serve the governmental interests in reducing the allegedly skyrocketing costs of political campaigns. Appellees and the Court of Appeals stressed statistics indicating that spending for federal election campaigns increased almost 300% between 1952 and 1972 in comparison with a 57.6% rise in the consumer price index during the same period. Appellants respond that during these years the rise in campaign spending lagged behind the percentage increase in total expenditures for commercial advertising and the size of the gross national product. In any event, the mere growth in the cost of federal election campaigns in and of itself provides no basis for governmental restrictions on the quantity of campaign spending and the resulting limitation on the scope of federal campaigns. The First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise. In the free society ordained by our Constitution it is not the government but the people—individually as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign.[65]

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[65] For the reasons discussed in Part III, *infra*, Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations. Just as a candidate may voluntarily limit the size of the contributions he chooses to accept, he may decide to forgo private fundraising and accept public funding.

For these reasons we hold that § 608 (c) is constitutionally invalid.[66]

In sum, the provisions of the Act that impose a $1,000 limitation on contributions to a single candidate, § 608 (b)(1), a $5,000 limitation on contributions by a political committee to a single candidate, § 608 (b)(2), and a $25,000 limitation on total contributions by an individual during any calendar year, § 608 (b)(3), are constitutionally valid. These limitations, along with the disclosure provisions, constitute the Act's primary weapons against the reality or appearance of improper influence stemming from the dependence of candidates on large campaign contributions. The contribution ceilings thus serve the basic governmental interest in safeguarding the integrity of the electoral process without directly impinging upon the rights of individual citizens and candidates to engage in political debate and discussion. By contrast, the First Amendment requires the invalidation of the Act's independent expenditure ceiling, § 608 (e)(1), its limitation on a candidate's expenditures from his own personal funds, § 608 (a), and its ceilings on overall campaign expenditures, § 608 (c). These provisions place substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate.[67]

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[66] The Act also established separate limitations for general election expenditures by national and state committees of political parties, § 608 (f), and for national political party conventions for the nomination of Presidential candidates. 26 U. S. C. § 9008 (d) (1970 ed., Supp. IV). Appellants do not challenge these ceilings on First Amendment grounds. Instead, they contend that the provisions discriminate against independent candidates and regional political parties without national committees because they permit additional spending by political parties with national committees. Our decision today holding § 608 (e)(1)'s independent expenditure limitation unconstitutional and § 608 (c)'s campaign expenditure ceilings unconstitutional removes the predicate for appellants' discrimination claim by eliminating any alleged advantage to political parties with national committees.

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[67] Accordingly, the answers to the certified constitutional questions pertaining to the Act's contribution and expenditure limitations are as follows:

3. Does any statutory limitation, or do the particular limitations in the challenged statutes, on the amounts that individuals or organizations may contribute or expend in connection with elections for federal office violate the rights of one or more of the plaintiffs under the First, Fifth, or Ninth Amendment or the Due Process Clause of the Fifth Amendment of the Constitution of the United States?

(a) Does 18 U. S. C. § 608 (a) (1970 ed., Supp. IV) violate such rights, in that it forbids a candidate or the members of his immediate family from expending personal funds in excess of the amounts specified in 18 U. S. C. § 608 (a)(1) (1970 ed., Supp. IV)?

Answer: YES.

(b) Does 18 U. S. C. § 608 (b) (1970 ed., Supp. IV) violate such rights, in that it forbids the solicitation, receipt or making of contributions on behalf of political candidates in excess of the amounts specified in 18 U. S. C. § 608 (b) (1970 ed., Supp. IV)?

Answer: NO.

(c) Do 18 U. S. C. §§ 591 (e) and 608 (b) (1970 ed., Supp. IV) violate such rights, in that they limit the incidental expenses which volunteers working on behalf of political candidates may incur to the amounts specified in 18 U. S. C. §§ 591 (e) and 608 (b) (1970 ed., Supp. IV)?

Answer: NO.

(d) Does 18 U. S. C. § 608 (e) (1970 ed., Supp. IV) violate such rights, in that it limits to $1,000 the independent (not on behalf of a candidate) expenditures of any person relative to an identified candidate?

Answer: YES.

(e) Does 18 U. S. C. § 608 (f) (1970 ed., Supp. IV) violate such rights, in that it limits the expenditures of national or state committees of political parties in connection with general election campaigns for federal office?

Answer: NO, as to the Fifth Amendment challenge advanced by appellants.

(f) Does § 9008 of the Internal Revenue Code of 1954 violate such rights, in that it limits the expenditures of the national committee of a party with respect to presidential nominating conventions?

Answer: NO, as to the Fifth Amendment challenge advanced by appellants.

(h) Does 18 U. S. C. § 608 (b)(2) (1970 ed., Supp. IV) violate such rights, in that it excludes from the definition of "political committee" committees registered for less than the period of time prescribed in the statute?

Answer: NO.

4. Does any statutory limitation, or do the particular limitations in the challenged statutes, on the amounts that candidates for elected federal office may expend in their campaigns violate the rights of one or more of the plaintiffs under the First or Ninth Amendment or the Due Process Clause of the Fifth Amendment?

(a) Does 18 U. S. C. § 608 (c) (1970 ed., Supp. IV) violate such rights, in that it forbids expenditures by candidates for federal office in excess of the amounts specified in 18 U. S. C. § 608 (c) (1970 ed., Supp. IV)?

Answer: YES.

# III. CRITICAL APPRAISALS OF PROPOSALS TO REFORM THE CONSTITUTION

## from The Twilight of the Presidency,
## by George E. Reedy

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## X | TO TINKER WITH THE MACHINERY

It is very obvious at the time of this writing that the American people sense the institution of the presidency to be in trouble. An office that was taken for granted a few short years ago has now become the object of critical study by political scientists, commentators, editorial writers, and former presidents and their assistants. Some scholars—such as Richard Neustadt and Clinton Rossiter—have devoted entire careers to analyses of the position. The presidency has been placed under more microscopes than any other similar office in history.

From the standpoint of the general public, of course, the feeling of uneasiness can be traced directly to the identification of the presidency with the nation. The troubles of our country are painfully apparent. The war in Vietnam still chews up our youth. Our college students are on rampages without precedent in our history. Inflation is bringing millions of Americans close to the edge of economic hardship. Negro militants are challenging not only their past inferiority in a segregated society but the validity of the liberal dream of a fully integrated society.

Should President Nixon succeed in pulling out of

Vietnam and re-establishing some degree of internal stability, much of the uneasiness of the general public would be allayed. But the causes which gave rise to the restlessness would remain. They would merely be less apparent with some of the stresses and strains removed.

Very little of the public discussion has focused on what I believe to be the major problem of the presidency, the increasing tendency of the office to isolate its occupant from reality. Instead, the assumption has been that the problems of our government could be solved by taking the president even further out of the political arena, removing some of the ability of the Congress to frustrate his will, and giving him more technical help. On this basis, the proposals which have received the most widespread attention in recent years would:

> Restrict the president to one six-year term.
>
> Extend the term of members of the House of Representatives to four years so they would always be running with a presidential candidate at the top of the ticket.
>
> Appoint "assistant presidents" to take some of the burdens out of the hands of the chief executive.

The proposal for "assistant presidents" can be dismissed out of hand. It is inconceivable that any president would ever permit another to have a piece of his power, even if practical machinery could be devised to make it possible. But the first two proposals deserve some extended consideration. Both were given a heavy impetus by the last administration and both are remedies in the classic style of the "hair of the dog."

These proposals are designed to lessen the political pressures that bear upon the presidency. The first assumes that if a president could not run for a second term, he would concentrate all his efforts on running the country. The second assumes that he would not have to face balky Congresses if the members had to run on the same ticket with him. In either case, he would not have to worry about hostile people threatening him with reprisals at the polls.

There is a naïveté about these proposals which would be charming in its innocence if so much were not at stake. They assume that wise and effective government flows from careful study by responsible men who have access to "all" the facts and who need only the authority and the machinery to carry out intelligently designed programs. In this concept, the bar to heaven on earth lies in the capacity of lesser informed, and sometimes selfish, mortals to frustrate the nation's administrators by political manipulation.

It is not surprising that these proposals should come from the "activists." Political advocates always work (and must always work) on the assumption that truth is an absolute rather than the product of shoving and hauling by competing intellectual interests. They live in a world of "right" and "wrong," categories which are entirely adequate for the conduct of political affairs from any platform except a throne or the White House. And for partisans, there can be no explanation for being "wrong" except lack of knowledge or venality.

The proposal for a six-year term is particularly interesting because it is based on the belief that a president's authority is somehow separable from his political leadership. It regards the nation as a corporate enterprise which can be managed without regard to the feelings of the employees or the stockholders (an obsolete view of corporate structure) and it assumes that a president does what he wants to do merely by issuing orders.

The reality is quite different. A president whose political leadership is unchallenged can do just about anything that he wishes. A president whose political leadership has suffered from erosion is virtually helpless. And one of the factors of political leadership is the assumption by those with whom he deals that he will be in office for a long time to come. In this respect, the six-year proposal would not even accomplish the ends sought by its proponents.

A six-year president would be a "lame duck" from the moment he took the oath of office. One of the most important of all of the bases of a president's power is his political authority and his potential for extended political authority in the future. A president whose term was limited to one six-year stretch would be a president who could command about two years of enthusiasm, two years of acquiescence, and two years of obstruction.

There is already an eight-year limitation upon the tenure of a president—the act of the vengeful, Republican Eightieth Congress determined to punish the wraith of the four-term winner, Franklin D. Roosevelt. But this amendment to the Constitution has only had relevance to one president since its adoption—ironically to the Republican President Dwight D. Eisenhower. President Truman, who was specifically exempted from its provisions, refused to run in 1952. President Kennedy was assassinated before he had completed his first term, and President Johnson declined to run for a second full term.

President Eisenhower, of course, finished his second term with just about the same high degree of popular esteem that had marked his inauguration in 1953. But since he had been a president who preferred to preside rather than to rule, the degree of popular support he enjoyed is not relevant to the problem. He was not a man who sought to manipulate the instruments of political power, and therefore there is no way of measuring the effect of the two-term limitation upon his authority.

The case of Lyndon Johnson, however, is very much to the point. The erosion of his power became apparent within weeks after his announcement that he was withdrawing himself from contention in March of 1968. The last ten months of his administration were marked by frustration on every issue, with the sole exception of the convening of the Paris conference to discuss ways and means of ending the Vietnam War. Even here, while he succeeded in launching the conference it is impossible to avoid the clear implication that the Vietnamese participants, both North and South, stalled substantive discussions while they awaited the outcome of the November elections. Obviously, they wanted to take the measure of the incoming president before settling down to a genuine give and take at the bargaining table.

On every other issue, President Johnson was unable to command even a respectful hearing. One of the outstanding examples was the nuclear nonproliferation treaty, which enjoyed widespread support from leading members of both political parties. It was difficult to find an argument against the agreement, but the Republican presidential candidate, Richard M. Nixon, said that in his judgment Senate consideration should be postponed. The ostensible excuse was the invasion of Czechoslovakia by the Soviet Union late in the summer of 1968—an action which had serious implications in terms of world peace but very little relevance to the treaty. A more likely and obvious reason was that Mr. Nixon preferred to have the document ratified in his, rather than in Mr. Johnson's, administration. And members of Congress are notoriously quicker to react to a potential, as opposed to a lame-duck, president.

Far more humiliating, because it involved personal relationships, was the Senate's refusal to confirm the president's friend, Abe Fortas, as chief justice of the Supreme Court. Among grounds cited were a number of occasions upon which Mr. Fortas, while a justice, had given the president personal advice. Translated into political English, this was merely another way of saying that he was a friend to a president who would not be in office much longer. It was enough. The nomination was withdrawn to prevent defeat.

During the closing days of his administration, Mr. Johnson might well have recalled an episode in 1956 when, while still a senator, he challenged Governor Allen Shivers for control of the Texas delegation to the Democratic national convention. Mr. Shivers was a man of tremendous power. He had succeeded in 1952 in swinging Texas to Dwight D. Eisenhower and he had broken the two-term gubernatorial tradition which up to that point had governed the political life of the Lone Star State. He had encountered some bad troubles through scandals arising in his administration, but the scandals were not directly traceable to him and his conservative political viewpoint was unquestionably the viewpoint of Texas. He was handsome, articulate, and forceful. He had only one real weakness—he had declined to run for re-election in 1956 and was serving as a "lame-duck" governor.

John Connally managed the Lyndon Johnson campaign to control the Democratic delegation. He called every influential citizen of Texas, many of whom had a long record of supporting Allen Shivers and opposing Lyndon Johnson. Connally had one message which he repeated over and over again: "Do you want to be with a dead governor or a live senator?"

Allen Shivers suffered one of the most complete defeats of any prominent political character in all of Texas history.

Far more serious, however, would be the impact of a one-term limitation upon the president in terms of his lifelines to reality. It would be clear to him from the first day in office that there was nothing political to be gained by placating pressure groups in society. He would, therefore, feel a far greater degree of freedom in following his own desires and ignoring those groups within the nation that displeased him.

It is, of course, a well-established tenet of American mythology that it is virtuous for a political leader to be "above" pressure groups. Every reformer pays lip service to this concept (as long as political leaders are not "above" the reformer's pressures). The puerility of this idea is appalling. Obviously, a president should act along those lines he believes to be right. But he should also act with political skills which enable him to convince all groups in a society that they are getting a fair shake. To assume that he will be a "better" president because he does not have to listen to constituent groups is to assume that democracy would be a better system if it weren't so democratic.

It is a very simple matter to become impatient with large groups of people who refuse to accept the wisdom of a course followed by a political leader. Most politicians manage to temper their impatience because they are looking forward to another test of their leadership at the polls. No useful purpose can be served by establishing a system which encourages the development of impatience into arrogance.

The concept that there are policies and programs which are immutably correct has been one of the most troublesome in the history of human government. It is especially troublesome in the modern age, which is dominated by "experts" who can bring to many problems knowledge and skills which undoubtedly supply answers. A businessman whose industry is sick has become accustomed to calling in market analysts, production engineers, cost surveyors, or management consultants. He sees with his own eyes that these technicians obtain results that are immediately demonstrable in terms of the profit-and-loss statement. The citizen who is ill is sent by his family doctor to a series of medical specialists who have divided up the human body and made specific areas their exclusive domains. Again the results are usually observable in terms of better health or at least a prolonged existence. The party organization which finds its treasury depleted is accustomed to calling in fund-raising experts who bring a wealth of knowledge to the gentle art of persuading citizens to part with a portion of their bank account for a worthy cause. Again, results are obtained which are immediately apparent and which can be set forth in terms of cold, hard figures that cannot be disputed.

It would be strange if this kind of atmosphere did not encourage the belief that there are government "experts" who can solve all the problems of the nation by combining elementary principles of qualitative analyses with electronic computers that bat out the correct answers in the twinkling of an eye. Of course, there are government "experts" who understand with considerable precision exactly how government works. There are men who can predict the course of a bill through Congress; who can plot the vagaries of the budget through a fiscal year; who can devise valid manpower charts. The problem, however, is that the experts can only answer the question of how decisions can be carried out. The basic problem of the decisions themselves remains and this is not a valid field for the bureaucrat.

The process of political leadership is far more than the mere charting of policies and programs. It is also the proper weighing of the resources that are available to meet those goals. Some of those resources can be judged with relative ease—finances, manpower, production capacity, raw materials. But the most important can be measured only through the intuition of the political leader—and that is the willingness of the people to support the actions that the political leader considers necessary. It does not matter what a president wants to do if the people are unwilling to do it. A political leader who ignores the popular will is not a hero but merely a shoddy craftsman who is not entitled to his job.

The type of political leader who rises to the heights of a Jefferson or a Lincoln or a Franklin Roosevelt does not, naturally, merely bow to the popular will and allow himself to be swept along by the currents. This is not political leadership in any sense of the word. But if he is unaware of those currents, he will be unable to pilot the ship of state to a safe harbor. He will not truly be leading.

No proposal which tends to separate a president from the political pressures of his constituency can possibly improve the operations of the presidency. All it will do is tend to make him an ineffectual voice issuing orders and decrees which serve as an irritant to inflame further the forces of disintegration that are always present in a society no matter how well ordered or how well planned it may be.

The proposal that House members serve a four-year term and be elected concurrently with the president would, at least, achieve the objective sought by its proponents. There is little doubt that it would make Congress more receptive to presidential desires. But this begs the question. Do we really advance the national interest by relieving the chief executive of this worry?

The mere fact that dealing with Congress is a worrisome proposition is probably the greatest value that body offers to the nation. A president who is anxious to secure enactment of his programs must walk carefully lest he tread on the sensitive toes of the men at the other end of Pennsylvania Avenue. He must (at least after the first fine flush of his inauguration has evaporated) listen to their opinions with some respect. He must take into account their problems if he is to secure the funds that he needs to manage the government. He must make strong efforts to build up a following on Capitol Hill and this he can only do through persuasiveness and compromise.

The Congress is one of the most sensitive barometers of public opinion available to the chief executive. The barometer may tell him some unpleasant things—but this is the function of a barometer. When a storm is approaching, a sea captain who refuses to consider the warning signs is a man who is doomed to lose his ship. Of course, the captain can go down with his ship, which may assure him a place in history, but it is not very comforting to the crew and their families, who are dependent upon his skill and judgment to survive.

Truly philosophical presidents who understood the nature of the problems of the office would welcome the midterm election regardless of its outcome. This is one of the few opportunities they have during the course of their administration of taking a sounding of the American people that is far superior to any readings that may be obtained by Dr. Gallup or Mr. Harris. The terms "philosopher" and "president" may be mutually exclusive, but this is no reason for the American people to indulge in the folly of depriving the president of one of his most valuable assets.

The antagonism felt by presidents toward Congress is entirely understandable. It arises out of the frustrations that inevitably come to any man who must grapple with the largely insoluble problems of a messy world and who must deal with the stubborn unreason of people in the mass. The legislative branch affords a convenient outlet for blowing off steam, though it is not very prudent to use it.

No president can admit, even to himself, that his problems stem from his inability to persuade the people of the rightness of his programs. In the United States, every politician must make due obeisance to the collective wisdom of the populace. Therefore, when a president's designs are frustrated, he must demonstrate, at least to his own satisfaction, that the popular will was with him but was somehow diverted or distorted by the machinery of government. The most satisfying method of achieving this rationalization psychologically is to zero in on the Congress.

Thus, Woodrow Wilson castigated the "little group of willful men" in the Senate who, he believed, had wrecked his grand design for world peace through American participation in the League of Nations. In the light of subsequent events, Wilson may have been right in his predictions of dire consequences should our country refuse to enter the League, although calamity and catastrophe are so much a normal condition of humanity that I am very skeptical of any claim that disaster resulted from a failure to do any particular thing. An objective student of the period, though, must admit that the voters simply were not ready for the step at the time. It was the American people—not the Senate—who frustrated the president.

Harry S Truman managed a successful election campaign by railing against the "do-nothing, good-for-nothing" Eightieth Congress. It was an effective tactic. But the Eighty-first Congress, which was elected with him, enacted virtually none of the bills Mr. Truman desired. Again, it was the American people, not the Congress, who frustrated the president.

None of this is to be construed as reflecting a belief that Congress is always right. Congress can be "wrong" just as the people can be "wrong"—overwhelmingly. Democracy does not seek to guarantee people wise and prudent government. Its real objective is to give them a voice in the management of their own affairs. Efforts to achieve that goal of necessity create tensions that focus upon the Congress more than any other governmental body. And those tensions can be eased only to the extent that we are willing to abandon our freedoms.

The proposal of a four-year term for House members has received short shrift from Congress thus far. That is what it deserves.

Neither this chapter nor this book will make any attempt to summarize or analyze all the proposals that have been advanced to "reform" or "strengthen" the presidency in recent years. There is a large body of academic literature on the subject, much of it excellent and with much of which I agree. This chapter merely singles out the few proposals that have been the subject of public debate on a reasonably large scale.

It is interesting that the only proposal which would seek to make the presidency *more*, rather than less, responsive to the people comes from outside the White House. It is the recommendation for direct national primaries to replace conventions as the device for selecting candidates. Generally, this idea is sponsored by those whose candidates have lost in the past few Democratic conventions.

This should not be confused with the drive for a direct election of the president. The latter is designed to eliminate the chance of a chief executive coming to office with only a minority of the people behind him. The possibility arises out of the existence of the Electoral College, a constitutional device which had validity in the early part of our history but which has little relevance to modern conditions. Abolition of the College, or at least of its power to frustrate the popular will, would be greeted with considerable relief but it would make little or no change in the conduct of the office of the presidency.

Direct presidential primaries, however, would make a difference because they would change the conditions under which the candidates are selected. Therefore, it is necessary to analyze this proposal, particularly since I do not think it wise, although it does meet the test of greater responsiveness.

In the first place nobody really can know what a national primary would do. The only experience so far with primaries has consisted of the presidential contests that are held in roughly a quarter of our states. It is folly to assume that the results would be identical if these primaries were extended to all fifty states. There is, however, a much deeper objection. Fundamentally, the workability of democracy rests upon a willingness of people to accept their second and third choices when they discover that they cannot get their first. For this reason, almost every facet of American government provides machinery for working out a consensus. In terms of the selection of a candidate, the national convention is the forum in which this is done.

The problem with the national primary is that it would deprive the voters of any mechanism through which the second and third choices could come into play. A vote is a "sudden-death" proposition that stops all further negotiation or conciliation. It is the "end of the line" and presents the choices in a simple "yes or no" form.

The problem here is easily illustrated. It is entirely possible that nationwide primaries could be settled by votes of 51 percent to 49 percent. The 49 percent would either have to capitulate to the will of the majority or walk out. In election years, however, there are not very many cases where people are willing to capitulate to the machinery. If they cannot get what they want, they are willing to bargain for a second choice on the thesis that they still have a share in the process. But a 51–49 situation—with no possibility of appeal—permits no second choices. The result would sooner or later be a party split and a proliferation of political sects that would bring the American government under its present structure to a halt because there is no machinery for forming a coalition government.

There is no guarantee that the bargaining process will automatically produce a great man. It resulted, in 1920, in the selection of Warren G. Harding as the Republican presidential candidate over a number of men who, by all contemporary accounts, were his superiors. But in the realm of politics, one must deal with relative concepts rather than with absolutes. Harding at least had the virtue of winning the election for the Republican party (Republican professionals would regard it as a virtue), and it turned out that for all of his inadequacies and for all the scandals that broke during his regime, he was very much in step with the national mood. His thinking pleased the public so much that his successor, who was elected without any difficulty, was merely a more careful and cautious carbon copy.

The bargaining process, moreover, frequently brings to the forefront men of stature who otherwise would have been unnoticed. The outstanding example in recent political history was that of Adlai Stevenson at the Democratic convention in 1952.

For the Democrats, 1952 was a year of tremendous difficulty. The combination of the Korean War, a series of petty scandals in President Truman's administration, and a heightening of tensions within the nation over the racial issue threatened to tear the party to pieces. There was no cohesive force in evidence other than a loosely defined coalition of "old New Dealers" like James Farley and congressional leaders like House Speaker Sam Rayburn. Important segments of the party in California and in the large urban centers were openly discussing the possibility of a split and obviously regarding the possibility with considerable equanimity. Only two candidates came to the convention with any real strength—Estes Kefauver of Tennessee and Richard B. Russell of Georgia. There were enough minor candidates (such as Senator Robert S. Kerr of Oklahoma and New York Governor Averell Harriman) to prevent either of the two leaders from securing the necessary two-thirds majority.

The nomination of either Senator Kefauver or Senator Russell would certainly have meant a party split of serious proportions. Kefauver was seen as a "liberal"—but a liberal with an abrasive personality who commanded a fanatical following and evoked a fanatical opposition. Russell was "the Dixie candidate" and, though highly respected and esteemed throughout the nation for his unquestioned intellectual capacity, totally unacceptable outside the South to a party which had dedicated itself to the cause of civil rights and which was heavily dependent upon the Negro vote in large Northern cities. It was inconceivable that any of the minor candidates could enlarge their support and capture the nomination.

Adlai Stevenson, the governor of Illinois, had taken himself out of the running several months earlier, but a small group of amateurs refused to accept his withdrawal and had opened a suite in the basement of the Chicago Hilton Hotel as a campaign headquarters. The professionals—Rayburn, Farley, and the then virtually unknown Lyndon B. Johnson—came to the conclusion that Stevenson would be the answer to the dilemma. He had unquestioned credentials as a liberal but lacked the abrasive personality that made Kefauver unacceptable. He had not been involved in any of the state presidential preference primaries and thus had not accumulated any enemies. He was a man of great eloquence and would have little difficulty in projecting his image to the public.

The Stevenson nomination, although a last-minute improvisation, was entirely due to the machinations of the "professionals." But from the moment of his acceptance speech, the Democratic party found itself involved in a love affair with its candidate.

Both Kefauver and Russell (the former somewhat glumly and the latter joyously) pledged their full support. Intellectuals throbbed to a man who could speak in an English uncluttered by clichés, and party professionals found that they could campaign for him without apologizing to their constituents. Stevenson, of course, lost the election but no one with a cool head thought that anyone could beat the Republican candidate, Dwight D. Eisenhower, in 1952. He did succeed in holding the Democratic party together, giving it a sense of purpose, and acting as a source of inspiration to party leaders until his death many years later.

It should be noted at this point that Adlai Stevenson was not, strictly speaking, an ideologue. He was a pragmatic man who refused to be bound by the formal structure of any political philosophy. In this, he was in perfect step with the mainstream of American politics, thus offering proof that a leader need not be sectarian or overly ideological to capture the imagination of millions of people.

The American system is simply not adapted to a multiplicity of ideological parties. It is possible in a parliamentary government to sustain as many parties as there are philosophies, but this possibility exists solely because the people under such a system do not elect their administrative leaders. Instead, they elect representatives of their own particular philosophy to a parliamentary body and these representatives work out the details of selecting the men who will actually manage the affairs of a nation.

This, of course, often results in a coalition. There are far too many different points of view among human beings for any one point of view ever to command a true and lasting majority. Somehow, representatives of those points of view must get together and work out the minimum basis upon which the administration is possible.

As the American people elect their chief executive directly, coalition at the government level is excluded. The final choice of a president is a "sudden-death" proposition. The Electoral College is not a body adapted to the type of bargaining that can go on in a parliament. Therefore, the coalescing forces in the American political system must exist at the party level rather than at the governmental level, and our two parties are actually coalitions rather than ideological choices.

A national primary would remove from the public scene the one part of our political process that permits bargaining between the second and third choices. With this bargaining point removed, it is impossible to imagine the government of this nation retaining any degree of tranquillity or stability. Every president would enter office with large parts of the population dead set against him and unwilling to be reconciled.

In summing up all the proposals to "reform" the presidency, they all fall on the same proposition. They fail to recognize the fundamental facts of the power relationships that have been created in our society. Some of them might tend to make the operations of the presidency more efficient, but nothing would be gained by increasing the effectiveness of operations that might be moving a society in the wrong direction. The art of politics remains the art of reconciling power relationships to the needs of a society. Any approach on any other premise is further doomed to failure.

There is more—much more—to the presidency than the kind of authority enjoyed by a production manager or a battalion commander. A president must be able to *lead* as well as to give orders. Proposals that seek to sustain his authority after he has lost his popular following are doomed to failure unless the proponents are willing to go to a police state. Rather than trying to cushion the White House against popular storms, efforts should be bent toward sharpening the president's political senses so that he can offer the only kind of leadership that is tolerable in a democracy.

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# XIII THE LENGTHENING SHADOWS

While working on this book, I asked a professional political scientist whose opinions I respect highly to review some of the earlier chapters. I had planned to use these sections as the basis for a lecture at an Eastern university and wanted to test the concepts on someone experienced in speaking to academic audiences.

After a few days, he returned the manuscript to me with a number of suggestions (all of which I incorporated) and after a brief discussion of specific points he said: "But these are all minor. The big question you will face is what you propose to do about it. You can't get away with presenting a problem without a solution before an American audience."

Naturally, I had planned to present a solution. It had not seemed to me a matter of any great difficulty—and still does not seem very difficult provided that I am not troubled intellectually by a "solution" that will never go any farther than the paper upon which it is written. But my friend's words introduced a disturbing note. Obviously, what he was saying is that American audiences are conditioned to a political presentation formula in which a "proposal" must follow a "problem" just as a stage blackout must follow the scene in which the burlesque comedian squirts seltzer water on the chorine's panties. It is not that the thought becomes invalid if it lacks a solution (as a play becomes invalid if it lacks a denouement) but that it becomes unacceptable. It suddenly became apparent to me that there was a converse to this proposition—that some very flimsy thinking by both academic political scientists and professional politicians has been "validated" over the years simply because they presented a "proposal."

I thought back over the years to:

> The Texas congressman with a large Latin constituency who was applauded in the press annually for a set speech proposing that the United States double its appropriations for Latin America.
>
> The senator with presidential ambitions who barked at his speech writer: "God damn it! I want a proposal in every speech I make even if it's only to build a shed 18 by 11 by 10 in Rock Creek Park."
>
> The group of academic political scientists centered on the Library of Congress who resolved solemnly every year that American political parties should become "responsible" and be held to their platforms.
>
> The "laundry list" of legislative proposals that Harry S Truman sent to each incoming session of Congress—to the delight of progressive columnists and the wry amusement of the Capitol Hill hierarchy.

Originally, I had planned to work out a system of parliamentary government for America. It still looks good to me—on paper. It would call for the conversion of the House of Representatives into a parliamentary body empowered to select the managers of the nation's affairs, including a "chief of government." These managers would serve as long as they enjoyed the confidence of the parliament or until the parliament had completed a four-year term. Loss of confidence in those four years would present the chief of government with two options—ask the president (elected for a ten-year term) to dissolve the body and hold new elections, or resign and make room for the appointment of new managers.

This system would answer most of the problems that I have raised. It would enable the chief of government to concentrate on the affairs of the nation and place the functions of chief of state in the hands of a man who had no power. The chief of government would be answerable on a daily basis to the criticism of his colleagues, who would approach him in no awe of majesty. The country would not be stuck for a fixed term of years with a chief executive in whom the people had lost confidence. The power to remove the chief of government would not be exercised too irresponsibly because he would have the option of calling new elections, and no politician faces any more elections than are strictly necessary. Ideologically responsible parties would be encouraged because if they elected even a few members to the parliament, they would have some ability to influence the selection of members of the government.

Of course, what I have outlined leaves many problems to be resolved. What would happen to the Senate? What should be done to election districts? How should the Constitution be amended to eliminate the separation of legislative and executive but maintain the independence of the judiciary? I am not tackling these problems even though they would not be difficult to handle. I am leaving them alone because none of this is going to happen anyway or has even a chance of happening without a revolution. And I don't want to perpetrate another "blueprint" merely to make an analysis acceptable to the audience.

The American people are *not* going to call a constitutional convention to form a parliamentary government. They are *not* going to separate the functions of chief of government and chief of state. They are *not* going to undergo the subtle intricacies of rewriting a document that has served them since 1789. And if they *do* call a constitutional convention, it will probably be for the purpose of abolishing the Bill of Rights and restricting the authority of the judiciary.

Governments do not arise out of the blueprints of political thinkers any more than religions arise out of the systems constructed by theologians. Both are the products of ecstatic events—revolution in one case and revelation in the other. The technicians are called in after the fact to rationalize the actions of the revolutionaries or the prophets and to establish the institutions and liturgies that keep them in power.

In terms of what the American people will do *consciously* about the presidency in the next few years, the answer is very little. It is possible that the Constitution will be amended to eliminate the Electoral College—but this is hardly a basic change. It merely eliminates the freakish possibility of a minority president. And, while common sense calls for this step, it would not alter the environment in which the chief executive lives and works.

What will *happen* to the presidency, however, is something else. People do not have as much conscious control over their social destinies as they would like to believe. But there are evolutionary processes in society which make fundamental political changes and these are worth analyzing.

No view of the American scene at the present time affords any comfort to an observer, unless he is a hardened revolutionary. The dominant theme of our national life has become violence—so much so that a presidential commission has been established to study its causes, the third such commission bearing directly or indirectly on the subject in four years.

It is arrant nonsense to conclude that this condition is inherent in the social fabric of the United States—to say with H. Rap Brown that "violence is as American as cherry pie." It would be equally valid (and equally meaningless) to say that violence is as Mexican as frijoles, as German as weisswurst, as English as fish and chips, as French as croissants, or as Swedish as smorgasbord. Every society has gone through periods of savagery and no amount of ingenuity has succeeded in eliminating upheaval as a periodic factor in human affairs.

Generally speaking, violence characterizes two stages in national development. The first is during the formative years when there are very few customs or rules to govern social and economic conduct. The second is during a period of disintegration when institutions have lost their capacity to respond adequately to internal strains. The real question is not whether violence is a part of American life but which stage of violence is now upon us.

When Rap Brown compares tear gas, skull cracking, and city burning to cherry pie, he is actually attempting to be reassuring. In effect, he is saying that we have gone through all of this before—even in the recent past—and we have survived as a nation with our society and our government relatively intact and even in some respects improved. A plausible case can be made for this argument.

The frontier, which was with us until the fourth quarter of the last century, was a region of lawlessness where a man's ability to survive depended upon his strength and his ruthlessness. Yet today it serves as the source for a body of mythology with which virtually all Americans can identify.

Labor strife, in many respects as ferocious as the bloodletting of the Paris Commune, was still erupting less than forty years ago. Yet, organized labor today has become so respectable that it is difficult to distinguish a gathering of union chiefs from a meeting of the board of directors of a large corporation.

The New York draft riots of the 1860s, which were put down only by the threat of artillery in the streets, were as destructive of the city as the ghetto eruptions of the past few years. Yet, they were surmounted and the North went on to win the Civil War.

Impressive as these examples may be, however, they do not afford genuine parallels to what is happening to us now. All these events took place under circumstances where American institutions possessed flexibility, chiefly because they had not been in existence long enough to suffer hardening of the political arteries. It was possible to improvise responses with little regard to the constrictions that the past can impose upon the present—even in the case of the labor strife.

Furthermore, the instigators of past American violence were all people who had someplace to go. They were men and women who could see light at the end of the tunnel—who merely had to clear some obstacles out of the way to gain their place in the sun. This was true of the frontiersman, the craftsman, and the immigrant. They were able to approach the bloodletting with a sense of mission and an air of exuberance.

A look at the current American scene raises grave doubts that our present difficulties are similar in character. Let us begin with a few observations on the sources of American disarray.

Basically, there are two groups mounting a major challenge to our social structure and, interestingly enough, they come from opposite poles of the economic spectrum —the privileged elite and the poverty-stricken urban masses. The first group, of course, consists of our college students and the second of blacks living in slums.

At first glance, this appears to be an improbable combination, for the two groups are not acting in concert despite the best efforts of the more radicalized white youth to forge an alliance. The black militants want nothing to do with them. In addition, the professed goals differ widely —the whites concentrating on the war in Vietnam and the Negroes on political power for their own race.

There is, however, one common bond. Both groups are reacting to frustration, and while they may not be engaged in a common cause, they have, through their principal spokesmen, expressed an identical determination to tear the society apart if they do not get what they want. They have demonstrated convincingly that the threat is not an idle one.

It is of little avail to argue that the black militants and the student radicals are only a minority of Negroes and white youth. This is almost certainly true. But it does not alter the fact that large areas of some of our greatest cities have been left in ruins reminiscent of the bombing destruction of World War II, and that some of our greatest universities—revered objects in our society—have been disrupted and shut down for significant periods. There are social dynamics at work which can give minorities the power of a well-used battering ram.

The peril of the moment is heightened by the absence in our society of any consensus on methods of dealing with dissent. The professed demands of the student radicals and the black militants center on goals which are impossible to achieve. The students are challenging the concept of social organization itself and the blacks are demanding a status to which, in justice, they are entitled but which could exist only if the nation could go back 300 years and start over again without slavery.

In such times, only the most sensitive and subtle political leadership can possibly lead the people through turmoil without major bloodshed. The reaction from Washington thus far does not appear very reassuring.

In the Johnson administration, the major effort to placate youth was a public-relations effort to stress the youthful quality of the White House staff. Inspired stories appeared in magazine after magazine listing the aides who were under thirty, and the president himself in addressing a college group dwelt heavily on the fact that when they came to the White House they could deal with people near their own age.

The effort could hardly be called a success. Most of the "young" people in the White House were ambitious "Establishment" types (as could easily be anticipated) and impressed the student radicals as captives of the "power structure"—white Uncle Toms. About the only result was alienation of older people who received the impression that the president was not concerned with their problems.

The approach to Negro problems had a sounder base and was more rationally conceived. Lyndon B. Johnson has a deep, sincere sympathy with black Americans, whom he felt were like himself in being born and reared in poverty (or, at least, under severe economic handicaps). The result was a stream of measures to train unskilled workers for useful employment, improve educational opportunities, open up jobs which previously had been labeled "white only," and clean up the intolerable conditions of the ghettos. Unfortunately, the efforts were too little and too poorly financed. They were also too late. The black revolution had passed the stage where progress would satisfy. The militants were interested only in revenge—revenge for the centuries in which they had had to accept humiliation as a condition of their daily lives. [illegible]

The record of the Nixon administration has been blurred. He, too, has made a conscious effort to impress the public with the youthfulness of his staff. Otherwise, there is no definite indication as to how he proposes to deal with young people. Negro leaders are tending to the belief that they will be ignored completely.

In an extraordinarily large percentage of life's crises, it is a good rule that if you just close your eyes, they will go away. The difference between the "good" politician and the "inspired" politician is that the latter knows when his eyes *must* be open and when he *must* act. There is every reason to believe that the present crisis will not evaporate. If anything, it is reaching more deeply into key elements of our population.

Mr. Nixon undoubtedly gained considerable popularity by temporizing with his problems during his first few months in office. The great majority of Americans are tired of "action" and are in a mood to blame their current difficulties upon the hectic spurts of activity during the Johnson administration. But the Nixon popularity has been gained at a tremendous cost. Each passing day pins the crises more squarely upon him and diminishes his capacity to use his predecessor as a scapegoat.

This process applies with heavy force (and, it should be said, very unfairly) to his key problem—Vietnam. When Mr. Nixon took office, it was "Johnson's war," just as it had been, for a while, "McNamara's war." Now, as the days drag by, it is becoming "Nixon's war," and the public is not very likely to continue to accept the argument that he inherited it. Unfortunately, there is little he can do about the situation that he has not done already. In the early days of his administration, he might have emulated Charles de Gaulle and pulled out. Now he is committed to continue the negotiations, and the key to his future lies in the hands of men in North Vietnam who are unlikely to hand it to him except at a price which is now unacceptable.

A society confronted with insoluble problems usually turns to its organs of repression. This process is now under way. Its beginnings are apparent in municipal and state elections and in the rising "law-and-order" movement. The majority—which is neither black, young, nor poverty-stricken—is gathering its forces to lash back. The liberal movement is at an ebbtide and people just want some peace.

It is at this point that a key question comes to the forefront. Are the organs of repression reliable as far as the "power structure" is concerned? The honest answer is one that is mixed and uncertain. The response must be—the police yes; the army probably but not for sure.

The various police forces throughout the nation have demonstrated already that they are willing to club down revolt by either radicals or blacks. They are groups of career men whose primary loyalties are to their leaders. Furthermore, where students are concerned they are confronting people for whom they feel an almost gut antipathy—a privileged elite that sees them as a lower order of human being and that makes no secret about its feelings.

The army, however, is a different proposition. The war in Vietnam has led to the drafting of enormous numbers of young men who do *not* regard the military life as an adequate career and who are subject to the same emotions and the same reactions that are moving young people on the "outside." In addition, efforts to escape conscription have brought into the ranks of the national guard and the organized reserves thousands of young people who are similarly inclined.

A conscript army is never a totally reliable force for the suppression of dissent. The business of maintaining internal order must be left to the professionals if the leaders of a nation are to feel secure. And the beginnings of disaffection are already apparent within the armed forces of the United States.

Thus far, the signs are meager and this country retains the capacity to throw first-class troops into battle in Vietnam, but the mere fact that the signs can exist at all is significant. Antiwar "coffee houses" near military posts, "underground" newspapers printed and circulated on army bases, lawsuits to enjoin the mobilization of organized reserve units may appear to be insignificant activities. Contrast the situation, however, with what would have happened had there been similar activity in the preceding two wars. There would have been a massive and savage retaliation by the entire community.

For the first time since the Civil War, the United States must give serious consideration to the possibility of military disaffection. This does not mean that revolt is seething among the troops or that they are anywhere near it. It does mean that seeds have been planted which can sprout with remarkable rapidity in the climate of modern civilization. There are now openly revolutionary forces at work within our country—forces that are having far more success than their Communist or anarchist predecessors.

The genius of the American system has been that up to this point, except for the Civil War, it has successfully avoided large-scale "confrontations" within our society. But present-day revolutionaries are deliberately developing confrontation techniques with a notable degree of success. They are alienating the majority, but they are radicalizing the youthful elite and the youthful blacks who occupy strategic positions in the center of our cities.

The question is raised: Can our political system cope with these strains? The answer is probably not. We are committed to a system which stresses stability simply because this was the most urgent need at the time it was devised. Now we are in a period which requires the utmost of flexibility—and that is a quality which is lacking.

It is possible, of course, that the Vietnam War will come to an end within a few months and a relatively lengthy period of peace will break out, but this eventuality is not under our control. We have no reason to believe that a cessation of slaughter in Southeast Asia will not be replaced by strains of a similar magnitude elsewhere. What has been demonstrated is that our form of government, which has stood virtually intact since 1789, is unable to withstand the stresses of the modern world.

It is a form which commits us to an administration for a fixed period of four years regardless of the public support accorded to the administration. It is a form of government which basically centers on one man and therefore does not allow adequate outlets for the aspirations of minorities. It is a form which isolates the man who holds the nation's highest office and shields him from reality.

Under the circumstances, change is inevitable. But no one can predict what form that change will take.

I am convinced it will not come through the cool type of intellectual exercise in which I indulged at the beginning of this chapter. Society does not work in that manner and never has. Even if it did, the forces that are compelling change would regard the structure of government as irrelevant to their demands. Many of their leaders regard government itself as irrelevant.

It is futile to reassure ourselves by repeating the shibboleth that today's radicals will be tomorrow's conservatives. This has been a truism in the past but it does not describe the process that is taking place today. The trend is for the replacement of radicals by militant radicals and then by more militant radicals. The "tired" radicals, who were so common in the 1940s and the '50s were basically men and women who had returned to childhood values against which they had rebelled. The revolutionaries of the 1960s—whether student or black militant—do not have such values to which they can return.

Again, we are faced with problems to which there is no good solution. The tragedy of humanity is its inner confidence that it can resolve all problems when the best it can do is to survive—and even that is in question.

The more probable outcome of our current difficulties will be a "man on horseback"—a George Wallace with a broader appeal or a Ronald Reagan with greater depth. It is certain that faced with a choice of chaos or suppression of dissent, most people will accept suppression of dissent. The human spirit cherishes freedom but the spirit is within men and women in varying degrees—and for most, stability has a higher priority.

The middle course between chaos and suppression of dissent, of course, is subtle and sensitive political leadership of the most pragmatic variety, leadership which balances delicately the factors of stability and freedom of expression. This is what we have had for nearly two centuries but it does not exist today. In this probably lies the twilight of the presidency. As an institution, its only hope for survival is to leave the museum where it operates and plunge into the world of reality; to walk the streets that real men and women walk; to breathe the air that real men and women breathe. The prospects are dim.

from The Decline and Resurgence of Congress,
by James L. Sundquist

## CHAPTER XVI

# The Unending Conflict

BY THE TIME the Congress was ready to claim its first victories in the drive to attain "coequal" status, as early as 1974, many of its more thoughtful members were already warning against carrying their struggle to excess. Representative Barbara Jordan of Texas, she who in 1973 had admonished the Congress to regain the will to govern, was the next year denouncing the extreme of "legislative dictatorship" as well as its opposite, "an imperial president with a subservient congress." The "revitalization of Congress need not result in a weak presidency," she declared. "The need for a strong President in the years ahead is beyond challenge."[1] Lee Hamilton, Democrat of Indiana, even denied the objective of coequality. "The effort of the Congress to reassert itself should not be misunderstood to mean that the Congress can truly become an equal branch of government," he told the House in mid-1974. "It is simply too difficult for 535 strong-minded aggressive persons 'to get it all together' on all the issues on the nations's agenda. . . . No one advocates a weakened Presidency . . . a shackled Presidency would not be wise. Our system requires a strong Presidency, but a strong President under the Constitution."[2] A few years later, Representative Morris K. Udall, Democrat of Arizona, reported, "I'm starting to hear talk in the cloakrooms now that wouldn't it be nice if we had a stronger President who could provide solid leadership." But he added, "The power of Congress is a new sort of idea. Members haven't tired of it yet."[3]

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[1] Speech to the Democratic mid-term conference in Kansas City, Mo., inserted in *Congressional Record*, December 11, 1974, p. 39244.

[2] *Congressional Record*, June 24, 1974, p. 4174.

[3] "The Great Congressional Power Grab," *Business Week*, September 11, 1978, pp. 91, 99.

Perhaps the wisest and most reflective view, as so often had been the case, came from J. William Fulbright of Arkansas. The former Senate Foreign Relations Committee chairman, observing events from the vantage of retirement, wrote in 1979:

> Our proper objective is neither a dominant presidency nor an aggressive Congress but, within the strict limits of what the Constitution mandates, a shifting of the emphasis according to the needs of the time and the requirements of public policy. In times of presidential excess, such as in the 1960s, an assertive Congress is a necessary corrective. In a time, such as the present, when Congress is asserting its prerogatives aggressively, but without a commensurate demonstration of public responsibility, there is much to be said for a revival of presidential leadership.[4]

Regardless of whether he or anyone else believed the emphasis should shift back and forth between the branches, it almost surely would. The balance between president and Congress had gone through nearly two centuries of ups and downs; in the third century the seesaw would continue. With each shift, the automatic stabilizer would be public opinion, as the politicians responded to what the people wanted—or lost their jobs to those who would. Thus, Gerald Ford and Jimmy Carter were quick to reverse the practices of Richard Nixon that had so deeply offended the Congress, and by 1977 the Congress in its turn was ready to pull back from the extremes of assertiveness—particularly in the field of foreign policy—to which its post-Nixon enthusiasm had carried it. When crises erupted in Southwest Asia in 1979, President Carter seemed to be as much in charge of the national security as his predecessors Johnson and Nixon had been when another corner of Asia was the center of attention. He unilaterally proclaimed the "Carter doctrine" for defense of the Persian Gulf, he moved naval forces to the Indian Ocean, he announced sanctions against Iran and later the Soviet Union, and organized the abortive mission to free the hostages held in Tehran—all without any visible interference or influence from the Congress. If Carter formally consulted with the leaders of that body, it was not considered important enough for public mention; and if he did not, nobody complained. The test would be in the results, as always; there had been little congressional objection to presidential domination of decisions regarding Vietnam, either, until things began to go sour there.

As the campaign of 1980 developed, the public seemed to be in about the same mood as Fulbright, ready for a revival of presidential leadership. Carter had gained support—for a time had seemed to salvage a failing presidency—by what was seen as resolute handling of the Iran and Afghanistan crises, and there was no evidence that the country was reacting adversely to any candidates when they promised, as all of them did, that they would be strong leaders.

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[4] "The Legislator as Educator," *Foreign Affairs*, vol. 57 (Spring 1979), pp. 726–27.

In any case, those who may have feared "legislative dictatorship" could be reassured. The Congress had recognized that it lacked the capacity to lead, to integrate policy, and, preoccupied as ever with the demands of constituents, it lacked the will to dominate on any broad and continuing basis. Nevertheless, it lacked neither the will nor the capacity to intervene whenever it chose, to the degree and on whatever subject it wished, and to impose its own notion of coequality. The compulsion to do so is always present; as Harold J. Laski wrote, the Congress "is always looking for occasions to differ from" the president, "and it never feels so really comfortable as when it has found such an occasion for difference. In doing so, it has the sense that it is affirming its own essence."[5]

Even if the self-righting tendency—monitored by public opinion—can be relied on to check or correct excesses by either branch, the governmental system can be damaged and public confidence severely shaken, as in 1973–74, before the corrections take effect. Even more important, the national interest can be gravely disserved by the stalemates that occur while the branches are locked in contest. The issue, then, is both one of how power is divided—the balance between the branches—and one of how it is shared. It concerns who will have the last word on particular decisions, and also how decisions can be reached jointly—for on a host of matters there can be no effective governmental policy until the branches reach, if not an agreement, at least an accommodation. So the question becomes one of how the partners of the forced and sometimes loveless marriage of president and Congress can come to live together with a reasonable degree of harmony and with enough unity of purpose to make the government functional.

This has been the concern of statesmen and of scholars for decades. Almost a century ago Woodrow Wilson worried that "the federal government lacks strength because its powers are divided, lacks promptness because its authorities are multiplied, lacks wieldiness because its processes are roundabout, lacks efficiency because its responsibility is indistinct and its action without competent direction."[6] Walter Lippmann, reading the record of "unending conflict" between president and Congress forty years ago, fretted that the "lack of a working arrangement between them exposes our government to continual trouble. We have not found a way to give the President his necessary

[5] *The American Presidency: An Interpretation* (Harper, 1940), p. 123.

[6] *Congressional Government: A Study in American Politics* (1885; World, 1956), p. 318.

powers without impairing the control of Congress. And we have not found a way to give Congress control without depriving the President of essential power."[7] "The American system is so constituted that it produces a conflict between the Executive and Congress every time the Executive tries to be positive and strong," Thomas K. Finletter, later to be secretary of the air force, wrote at the end of World War II. "You cannot have a government capable of handling the most difficult problems that peacetime democracy has ever faced with the two main parts of it at each other's throats."[8] And the British scholar Herman Finer wrote in 1960: "The separate elections of the President, the Senate, and the House of Representatives fractures the nation's vision and will, destroys cogency of thought, and pits legislature and executive branch against each other."[9] And, among today's troubled observers, Douglas Dillon, former treasury secretary and under secretary of state, doubts that, in a world of military confrontations and economic threats, "we can long continue to afford the luxury of the division of power and responsibility between our executive and legislative branches of government."[10]

To overcome the built-in separatism of the governmental structure, the presidential leadership model was evolved. Yet, though the dominant model—accepted by presidents, congressional majorities, the media, and the public—it was less than universally approved. For it was largely a liberal creation, supported most fervently by those who, idealizing Franklin Roosevelt, wanted government to continue to strive for great and noble ends, both at home and abroad, in the New Deal manner. So it was the liberal bloc in the Congress who initiated the concerted attack on the institutional obstacles to presidential leadership of the legislative branch—the seniority system, the veto power of the House Rules Committee, the Senate filibuster—and conservatives of both parties who defended them.

The issue of strength and unity in government may by now, however, have lost some of its ideological content. The experience of Presidents Nixon and Ford demonstrated that governmental disunity could hamper conservative as well as liberal objectives; Nixon was frustrated by the Democratic Congress in many of his initiatives for retrenching the responsibilities of government and reducing its cost. And ever since the end of the cold war

[7] Newspaper column of February 8, 1941, quoted in Arthur N. Holcombe, *Our More Perfect Union* (Harvard University Press, 1950), p. 270.

[8] *Can Representative Government Do the Job?* (New York: Reynal and Hitchcock, 1945), p. 9.

[9] *The Presidency: Crisis and Regeneration* (University of Chicago Press, 1960), p. 302.

[10] James Reston, *New York Times*, December 23, 1979.

consensus, it has been the conservatives rather than the liberals who have been the leading advocates of a stronger military posture and forceful foreign policy that require national unity behind the president.

## The Issue of Constitutional Reform

Many who have deplored the disunity of the U.S. government have despaired of finding a remedy within the constitutional structure and have looked longingly across the water to Great Britain or across the border to Canada. There, as in most Western European and British Commonwealth countries, the parliament is sovereign and the legislative and executive branches are joined at the top, in a cabinet that dominates the former and directs the latter. The nineteenth century produced a considerable volume of scholarly and journalistic writings advocating that the U.S. Constitution be revised in the direction of parliamentary government (the most trenchant and influential contribution to the discussion being that of the young Woodrow Wilson).[11] In this century, whenever internal dissension seemed to be robbing the government of strength to meet its basic responsibilities, the arguments were revived.

The conflicts over New Deal legislation provoked extended treatises on constitutional reform. Writers of that period, upset by the recalcitrance of the Congress toward the Rooseveltian leadership, urged adoption of the device used in parliamentary governments to attain party discipline and, when necessary, to break deadlocks—dissolution of the legislature, followed by elections. William Y. Elliott suggested that the terms of House members be extended to four years, concurrent with the president's, and that the executive then be given authority to dissolve the House of Representatives once during his term. The people could then choose, in effect, between president and representatives. They could elect candidates who promised to support the president or, by voting for the opposition candidates, give the president a mandate to resign. To avoid the cost and political jeopardy of a special election, Elliott reasoned, the House would become "a much more disciplined body." But when the president called an election, he would give up his veto power for the rest of his term, enabling the Congress to set policy.[12] Henry

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[11] See James MacGregor Burns, *Congress on Trial: The Legislative Process and the Administrative State* (1949; Gordian,1966), pp. 146–48; Henry Hazlitt, *A New Constitution Now* (New York: Whittlesey House, 1942), pp. 15–45.

[12] *The Need for Constitutional Reform* (New York: Whittlesey House, 1935), pp. 200-01, 234–35. Elliott suggested that the power of dissolution might extend to the Senate as well; to curtail the

Hazlitt advocated a full-fledged parliamentary system, with the executive chosen by the Congress. The legislature could at any time vote a lack of confidence in the executive—as in the House of Commons—and the executive (who might be designated premier rather than president) would have the option of dissolving the House and calling new elections or simply resigning. In the new election, the executive as well as all members of Congress would be obliged to run, and if the executive lost, the Congress would choose his successor.[13] Finletter, writing in 1945, proposed that the terms of senators, representatives, and the president all be six years, with simultaneous election; that dissolution power be vested in the president; and that upon dissolution a new election be held for the presidency and the entire membership of the Congress. Presumably, the same party would win control of both branches and the government would be unified under presidential leadership.[14] None of these proposals gathered any support, either inside or outside the government, and the discussion of constitutional reform lapsed.

President Lyndon B. Johnson revived one aspect of the earlier plans when he endorsed the idea of electing House members for four-year terms concurrent with that of the president. In a 1966 message to the Congress[15] he based his case on the desirability of reducing the burden and cost of campaigns every two years, and he justified putting the election in the presidential year on the democratic principle that more voters turn out then than in the off years. Congressional opinion on the president's proposal was splintered among those members who preferred no change at all and those who supported variants of the plan—election of all members during the presidential year, all members in the mid-term year, or half in each. Of these four positions, a Brookings Institution survey showed that the Johnson proposal had the least support, and presumably for the very reason that led its original advocates (and no doubt Johnson himself, no matter what he said in his message) to support it—it would tie the House members' fortunes too closely to the president's. Republicans, who had just seen many of their party colleagues swept away in the Johnson landslide of 1964, were unanimously opposed to a four-year term coincident with the president's. The survey found "very

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Senate's powers, he would strip it of power over money bills and reduce the majority required for approval of treaties from two-thirds to a simple majority. He argued that the dissolution power would eliminate the need for presidents to use patronage as an instrument of discipline and hence would make possible the extension of civil service to top administrative jobs, again on the British model.

[13] Hazlitt, *A New Constitution Now*, pp. 9–10, 102–06.

[14] Finletter, *Can Representative Government Do the Job?* chap. 12.

[15] "Special message to the Congress Proposing Constitutional Amendment Relating to Terms for House Members and the Electoral College System, January 20, 1966," *Public Papers of the Presidents: Lyndon B. Johnson, 1966* (U.S. Government Printing Office, 1967) pp. 36–41.

little enthusiasm" for any change at all and no prospect that two-thirds of the members could agree on the form a constitutional amendment should take.[16] In any case, Judiciary Committee Chairman Emanuel Celler, Democrat of New York, was among those opposed to any change, and after hearings the measure died in his committee.

The Watergate scandal aroused another flurry of interest in constitutional change, centered on the problem of removing presidents. Noting the limitations of the impeachment process—which in practice permits removal only for provable criminal misconduct[17]—several members of Congress introduced constitutional amendments either to broaden the impeachment power or to make the president removable by the Congress by a simple vote of no confidence. Their purpose was not to break policy deadlocks but to remove a president who through incompetence, mental or emotional instability, misfeasance, nonfeasance, or any other reason had lost the public confidence a nation's leader must possess. The principal measure on the subject, offered by Representative Henry S. Reuss, Democrat of Wisconsin, required that if the Congress deposed the president (with a 60 percent majority required in each House), all members of the Congress as well as the president would have to submit to a special election—a provision designed to ensure that the Congress not remove a president for trivial or partisan reasons.[18] After the resignation of President Nixon, however, the problem seemed to be solved, and interest in a simpler process for removing presidents melted away.[19] The problem remains unsolved, of course, insofar as presidents may lose leadership capacity for reasons other than crime.

However grave the structural weaknesses of the American government, those that are embedded in the Constitution are quite beyond the reach of reformers—barring some governmental breakdown more catastrophic than any so far experienced.[20] The amendment process is so formidable that any basic structural change that arouses controversy and determined opposition is doomed at the start. A proposal can be blocked by one-third plus one of the membership of either House or, if it hurdles that obstacle, by as few as one-eighth of the nation's state legislative bodies—one house in each of thirteen states. Far more than that small number would surely resist any proposal to tamper with the country's fundamental institutions, given the aura of reverence that surrounds the Constitution and the specter that adverse, unintended consequences would attend a basic change. The overwhelming public demand necessary to overcome both inertia and well-founded opposition arguments would hardly form around an issue as abstract as the structural reform of institutions. Accordingly, any practical remedies to the problem of disunity among the elements of the governmental structure at this time must be sought within the bounds of an unamended Constitution.

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[16] Charles O. Jones, *Every Second Year: Congressional Behavior and the Two-Year Term* (Brookings Institution, 1967), pp. 104–12. Of the House members, 318, or 73 percent, returned their questionnaires.

[17] Whether the Constitution intended broader grounds in its language ("Treason, Bribery, or other high Crimes and Misdemeanors") is a moot question because the requirement of a two-thirds vote for removal of a president means that the views of thirty-four of the one hundred senators determine what the grounds shall be, and the experience of the Nixon case makes clear that at least that many will always insist on the narrower interpretation.

[18] H. J. Res. 1111 (introduced August 15, 1974).

[19] *George Washington Law Review*, vol. 43 (January 1975), contains a thirteen-article symposium on the Reuss resolution, with some support—including an essay of mine—but many theoretical and practical criticisms.

[20] Lloyd N. Cutler, "To Form a Government," *Foreign Affairs*, vol. 59 (Fall 1980), pp. 139–43, discusses a series of alternative amendments to mitigate the difficulties arising from the separation of powers; he proposes a bipartisan presidential commission to conduct a full-scale study. Charles M. Hardin, *Presidential Power and Accountability: Toward a New Constitution* (University of Chicago

## Reform without Constitutional Amendment

The Constitution clinches the separation of powers by prohibiting a member of Congress from also holding executive office. Any step toward formal unification of the branches on the parliamentary model is forbidden, then, but over the years many proposals have been advanced to move toward that end through devices that would institutionalize consultation between the branches, joint consideration of policy issues, and even joint decisionmaking. One set of proposals would introduce officials of the executive branch into congressional proceedings; another would insert congressional leaders into executive decision processes. Or, in the shorter phrases of Stephen Horn, one would put the cabinet *in* Congress, the other construct a cabinet *from* Congress.[21]

Proposals to put the cabinet in Congress have been advanced by two sets of advocates, for opposing reasons. One group has sought to enhance executive influence over the legislature, by permitting the cabinet members to participate in debates on measures concerning their departments (but not to vote, for that would transgress the constitutional separation). The other has pursued the objective of greater legislative influence over administration, by bringing cabinet members to the floors of the House and the Senate at stated times for questioning. A bill authorizing both of these was approved by a

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Press, 1974), is an earlier, comprehensive presentation of the case for constitutional reform, with proposals for amendments.

[21] *The Cabinet and Congress* (Columbia University Press, 1960), p. 211; the summary of proposals to put the cabinet in the Congress is largely derived from his study.

special House committee and debated on the floor in 1865 but not passed. A measure providing only for a question period was pressed by Representative Estes Kefauver, Democrat of Tennessee, in the mid-1940s and received considerable support from outside the Congress.[22] But Speaker Sam Rayburn and other House elders were adamantly opposed, and the measure did not emerge from committee.

A survey by Horn in 1957 found that members of Congress who chose to comment were opposed, by about three to one, to admitting cabinet members to their respective floors even for a question period. The opponents feared an enhancement of executive power and, with a few exceptions, saw no benefit for the Congress. Information and advice from the executive branch, they held, were gained more efficiently through committee hearings and other existing communication processes, and many feared that the question period would degenerate into harassment and badgering of the executive officials.[23] As for the executive view, two earlier presidents, Taft and Harding, had endorsed the idea, with the support of some or all of their cabinets, presumably for the same reason that legislators have found for opposing it—enhancement of executive power (Secretary of War Henry L. Stimson, a strong advocate, contended that the proposed executive budget, which Taft was supporting, would "carry very little distance" unless cabinet members were present to explain and defend it in the floor debates).[24] But when Kefauver advanced his proposal in the 1940s, Franklin Roosevelt gave it no encouragement, and seventeen former cabinet members responding to Horn's 1957 survey were unanimous in seeing no potential gain in executive power from a legislative question period even if it were broadened to provide for participation of cabinet members in debate. Half of the former executives thought the Congress would gain in power, and they expressed an "intense" suspicion of potential legislative interference with administration.[25]

Perhaps the idea is bound to fail at any time because, quite apart from the normal human resistance to institutional change, too many in each branch will see the other as the gainer. When the executive is in the ascendancy and aggressive, as it was during most of this century, the Congress will resist the highly symbolic intrusion into its affairs that appearance of cabinet officers on the floors of the Congress would represent.[26] Conversely, when the legislature is resurgent, as in the 1970s—or even when it is relatively docile, as in 1957—the executive will be more aware of the potential harassment and interference than of the opportunity to educate the Congress. It may be significant that while, before their election, both President Carter and Vice President Mondale endorsed the proposal for a question period,[27] there is no record of their having reiterated that view after their inauguration.

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[22] See ibid, pp. 229–31; George B. Galloway, *Congress at the Crossroads* (Crowell, 1946), pp. 212–19.

[23] Horn sent a questionnaire to all members of both houses; 182 representatives and 36 senators—42 percent and 38 percent, respectively—responded. Horn analyzed only the House returns (*Cabinet and Congress*, pp. 193–210).

[24] Letter from Stimson to Taft, November 11, 1912, quoted in ibid., p. 117. After he left office, Taft withdrew his support for the idea.

[25] Ibid., pp. 176, 185.

The alternative approach, to put Congress in the cabinet, has likewise been advanced at intervals over the years, but it has attracted even less support and has never found favor with any president. Several academic proposals stimulated discussion in the 1940s, particularly a scheme advanced by Edward S. Corwin, the constitutional scholar, for a cabinet constructed from a joint legislative council created by the two houses and made up of its leading members. The members would not be officers of the executive branch with administrative responsibility, to avoid the constitutional prohibition, but as an advisory group they would both control the president by bringing "presidential whim under an independent scrutiny which today is lacking" and support him by getting his legislative program, as agreed to by them in cabinet, enacted.[28] In an amplification of the plan by Corwin and Louis W. Koenig some years later, the notion of a compact between the branches was introduced, whereby in exchange for seats in the cabinet the leaders would pledge themselves to guarantee action on all of the president's legislative proposals within a reasonable time.[29]

The nearest the Congress has come to considering any scheme for a legislative council was in 1946, when the La Follette-Monroney committee on congressional reorganization endorsed a less formal version of it. In recommending creation of a majority policy committee in each house, the committee also recommended that these meet regularly with the president and his cabinet as a joint legislative-executive council, in order to facilitate reaching a common policy and mitigate deadlocks. But when Speaker Rayburn rejected the idea of having a policy committee in the House, the joint council proposal died with it.[30] Since then, the notion has been revived in a limited form for application to the national security area alone, but without gaining significant support either from inside or outside the government. Francis O. Wilcox proposed a joint executive-legislative committee on national security affairs to be made up of the president, the vice president, and top executive officials and congressional leaders dealing with foreign and military policy,[31] and Senator Hubert H. Humphrey, Democrat of Minnesota, picked up the idea in a modified form in 1975, in a bill to create a congressional joint committee on national security that would not only coordinate policy and action in the legislative branch but also meet regularly with the president.[32] But presidents and other congressional leaders have been satisfied with the existing practice of informal meetings at the White House. This arrangement has the advantage, from their view, of providing opportunity for consultation while preserving the freedom of action of all parties to go their separate ways when the conversations end.

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[26] In earlier years, cabinet officers were occasionally admitted to the House or Senate floor, but now when members desire to assemble to hear an executive official (other than the president)—usually the secretary of state—they use an auditorium at the Library of Congress.

[27] Jimmy Carter, *Why Not the Best?* (Nashville: Broadman Press, 1975), p. 147; Walter F. Mondale, *The Accountability of Power* (McKay, 1975), pp. 148–51, 216. Both urged that the question periods be televised. Mondale had sponsored legislation along the lines of the Kefauver bill.

[28] *The President: Office and Powers, 1787–1957*, 4th rev. ed. (New York University Press, 1957), pp. 297–98. Finletter gave the idea strong support in *Can Representative Government Do the Job?* chap. 11.

[29] *The Presidency Today* (New York University Press, 1956), p. 95. The arrangement would be effected without a constitutional amendment, simply by a "gentlemen's agreement." Senator Joseph S. Clark, Democrat of Pennsylvania, revived part of this proposal with a suggestion that the two houses bind themselves by concurrent resolution to bring to the floor any measure designated by the president as a priority matter within six months of the time he sent it to the Capitol; *Congress: The Sapless Branch* (Harper and Row, 1964), pp. 205–06. But his colleagues were not attracted to the idea.

The weakness in all of the joint cabinet or council proposals is that when the president and congressional leaders are in harmony, new formal mechanisms would add little to the existing opportunities for consultation and communciation, and when they are not in harmony, the devices would fall into disuse. One can visualize, for instance, the treatment that President Nixon, or President Johnson before him, would have given a legislative-executive council or committee when Senators Fulbright, Mansfield, and others were leading the Senate rebellion against the Vietnam War. The president would have simply ceased to call meetings. If the structure provided that the congressional members could initiate meetings (it is hard to visualize presidential assent to any such provision in the design of such a structure), the president could find his schedule too crowded to permit him to attend. If adverse public reaction to such stalling finally forced him to meet with the group, he would be sure to find the legislative members of the committee divided, so that he could accept the advice of those who agreed with him and do as he wished anyhow. Britain's unwritten constitution makes the

[30] See pages 187–89 above.

[31] *Congress, the Executive, and Foreign Policy* (Harper and Row, 1971), pp. 157–59.

[32] *Congressional Record,* January 15, 1975, p. 213. In 1943 Senator Alexander Wiley of Wisconsin, a senior Republican member of the Foreign Relations Committee, had introduced a resolution to create a joint foreign relations advisory council, but the measure never received a hearing. Horn, *Cabinet and Congress,* pp. 171–72. However, Secretary of State Cordell Hull created a temporary executive-legislative advisory committee on postwar foreign policy.

cabinet collectively responsible, which forces discussion and the attainment of a sufficient consensus to ward off resignations and party splintering. But the United States' written charter forbids collective responsibility through the formal merger of separated powers, and any gentlemen's agreement to unify the branches through informal practice would last only as long as the participants agreed on the substance of the policies discussed—in which case it might become a time-consuming nuisance bringing no particular benefit. A president who wants to consult with the Congress will do so and select his own consultees—as President Truman did with Senator Vandenberg. One who does not want to can hardly be compelled by statute to do so, and to avoid being under pressure that he might not welcome, no president, it is safe to say, would ever approve the statute in the first place.

## The Responsible Party Model

If reformers could not ameliorate the unending conflict between the branches by constitutional amendment or by joining cabinet and Congress, another avenue appeared open. That was to remodel a political institution that is outside both the Constitution and the government itself—the political party.

Here again, the reformers looked to Europe, but they also looked to America's political past. At times in U.S. history the president and the Congress had managed to work together in constructive and creative harmony. What was the explanation? And could that explanation, whatever it was, be captured and institutionalized so that harmony would be not the rare exception but the rule? Political scientists thought the secret of successful collaboration in any period that might be chosen as the ideal—the administration of Jefferson, say, or the early Wilson, or the early Franklin Roosevelt—was not hard to identify. President and Congress were united, and impelled to work together, by the bonds of party. "For government to function," wrote V. O. Key, Jr., "the obstructions of the constitutional mechanism must be overcome, and it is the party that casts a web, at times weak, at times strong, over the dispersed organs of government and gives them a semblance of unity."[33]

Yet in the twentieth century the web of party has been, most of the time, weak and getting weaker, and there lies the root of the trouble. Even before this century, American political party organizations rarely attained the degree of cohesion and discipline characteristic of the parties of Britain and continental Europe. Here the national parties have always been federations of state parties, some of which in turn have been little more than federations of county and city organizations. And most of these organizations have been steadily losing strength, as observed in an earlier chapter; in states without effective two-party competition, they might barely exist. The national parties have had no control over nominations for the national legislature. Nor have they usually had organs to pronounce party policy, except for the quadrennial platform hastily put together by the presidential nominating convention. And even then there has been no means for, or tradition of, requiring anyone running as the party's nominee—even its presidential candidate—to adhere to the platform's policy positions. So presidents, senators, and representatives elected at the same time by the same party have been free to pursue their independent courses once they took their seats in Washington. Governmental cohesion in the capital has been undermined by the absence of cohesion in the apparatus that nominated and elected presidents and congressmen—the party structure.

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[33] *Politics, Parties, and Pressure Groups*, 5th ed. (Crowell, 1964), p. 656.

The prevailing model of how the U.S. government could be made to work, the presidential leadership model, thus came to be seen by the more analytical of the reformers as simplistic. President and Congress had to be bound together by a principle more reliable than congressional acquiescence to the presidential will, for how could the Congress be made to acquiesce? And the principle had to be a safer one, too. For running through the liberal disparagement of the separation of powers structure over the years had not been one theme but two: the president had not only to be supported but also to be checked and controlled. So some who worried about the deadlocks of the U.S. government went beyond the presidential leadership model and evolved one that was more complex and more subtle, the responsible party model.[34]

The authoritative presentation of this concept is the 1950 report of the Committee on Political Parties of the American Political Science Association, headed by E. E. Schattschneider. Entitled *Toward a More Responsible Two-Party System*, the report proposed a new party institution to provide the missing elements of unity and cohesion. It would place at the top of the national party a party council of fifty members, including the president and vice president (or in the case of the opposition party, its nominees for those offices), senators, representatives, governors, and party officials chosen by the national convention. The council would have broad responsibility not only to link the executive and legislative branches of the national government but to unify all elements of the party, state and local as well as national. It would be responsible for party management and, most important, would pronounce party policy in between conventions. It would draft a platform for submission to the convention and interpret the platform afterward. It would also make recommendations "in respect to congressional candidates," discuss presidential candidacies, and even perhaps screen the candidates. Within the council might be a smaller group of advisers to the president—a party cabinet.[35]

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[34] John S. Saloma III, *Congress and the New Politics* (Little, Brown, 1969), pp. 37-47, presents such a model as the "presidential responsible party model," with no reference to a distinct presidential leadership model. I believe that the concept of attaining governmental unity through presidential preeminence, without the development of the new party organs or party functions that the responsible party model incorporates, has gained such widespread acceptance and support that the distinction should be made.

In this unified system the president would occupy "a central place"—an understatement, surely, for a strong and popular president, with the executive patronage at his disposal, could easily dominate the party council. Yet the report in a prescient section warned of "overextending the presidency," of relying exclusively on one man's program and leadership, of turning the presidency into "personal government."[36] Accordingly, the concept was one of collective leadership, with the president subject to restraint by a group, many of whose members—the congressional representatives, the governors, officials of state party committees—would have independent bases of political support.

The nearest thing to an American precedent for the committee's concept of the "responsible" party would therefore not be Republican or Democratic party organizations at all, for the strongest of them were autocratic "machines" run by bosses; it would be the local nonpartisan reform organizations that had risen in various localities since the Progressive Era to smash the old-style machines. This was the kind of party organization the committee conceived on a national scale—issue-oriented, programmatic, dominated by no single person but led by a plural elite whose distinguishing characteristic was its ability to design and articulate the goals of governmental policy. Neither the president alone nor even the president and the Congress together would be responsible for the record of legislative and executive action; the party would be.

Six years after the report appeared, it was one of the influences that led the Democratic National Committee to organize a Democratic Advisory Council with an intended membership similar to that the political scientists projected. And nothing better illustrates the defects in the committee's model that render it unworkable in the American setting than the experience of the council. Its design failed in the first instance when the leaders of House and Senate declined to join; once more the desire of responsible elected officials for independence from the executive, or anybody else, was overriding. Organized with some legislative members but without the leaders, the council issued policy pronouncements, but while they gained publicity for the party, they did little more than that; no senator or representative felt any more bound by its decisions than by analogous declarations in the party platforms.[37] Finally, the council was disbanded by the Democratic party's own president after John F. Kennedy was elected in 1960; like the leaders of the Congress earlier, he too cherished his independence and felt quite capable of interpreting the party platform and enunciating party policy by himself, without the help of any formal party structure. The old presidential leadership model was good enough for him.

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[35] *Toward a More Responsible Two-Party System* (Rinehart, 1950), pp. 39–44. The committee cited as precedent a party council created by the Republican National Committee in 1919, which "evidently ceased to function after a few years"; p. 42.

[36] Ibid., pp. 93–95.

Thus, while the Committee on Political Parties made an excellent academic argument for its model, it made no practical case at all. It did not explain how presidents would be persuaded to share their power with a group outside their control and submit to its restraints, nor why congressional leaders would wish to do so either. It did not explain what sanctions the council would apply to enforce its policy positions. The sanctions, indeed, ran all the other way; the council would be at the mercy of the president and the other elected officials who would be its most powerful members, for they could wreck it with their individual or collective resignations the first time it sought to restrain them. If the council evaded tough issues, it would be innocuous. If it tried to grapple with them, it would dissolve.

Nevertheless, Key was right. The party remains the web that gives the dispersed organs of government their semblance of unity. When at times the web is strong, it is not because the party imposes discipline directly but simply because presidents, senators, and representatives who carry the same party label exhibit a stronger interest than they do at other times in their collective party record. Discipline is voluntary. Congressmen of the president's party recognize that they have an interest in making him look good, because either he or another nominee running on his record will head their

[37] The experience of the Democratic party in its attempts to adopt policies at mid-term conferences in the 1970s confirms the lesson of the council. The party's mini-conventions in 1974 and 1978 had publicity value, but there is no record that President Carter or any member of Congress altered a policy position because of their resolutions. Moreover, the conferences were deliberately scheduled after the mid-term elections to avoid creating any policy conflicts for Democratic candidates.

common reelection ticket. Accordingly, they give him the benefit of the doubt on policy issues and follow his lead whenever constituency pressures are not too strong. And the president, for the same reasons, is respectful of the views of his congressional party. Thus the bonds of party generate centripetal forces to counter the centrifugal forces inherent in the relations between the branches; they engender impulses toward harmony to offset the natural tendencies toward dissension.

That is one of the reasons that the recent deterioration of parties in the United States must be a cause of grave concern. The trend toward party disintegration is measured by the increase in the proportion of voters who do not identify with any party, who call themselves independents, and who split their tickets with abandon. It is manifested in the decay and disappearance of old-style party organizations and the failure in many places of new-style structures to arise to fill the vacuum. It is reflected in the rise of individualism within the Congress. In this respect, too, the Committee on Political Parties was foresighted; it warned that unless parties became responsible, by adopting and carrying out party programs as a collective responsibility, public cynicism about parties would spread and the parties themselves would disintegrate.[38] That, it is clear, is happening. Millions of young people, in particular, do not identify with any party, do not understand the differences between the major parties, what they stand for, why they matter, even why they exist. Meanwhile, the power and significance of single-issue groups are enhanced by the lessening of competition from the multi-issue, more broadly based, parties.

In the days when parties were stronger, the president and the main body of his party in the Congress were usually bound in a close relationship long before the inauguration, because no candidate for president could be nominated without the assent of the congressional elders. That was before the hegemony of the presidential primary, when the party elite, including leaders of its congressional wing, performed a screening function in the nominating process. To be eligible for nomination, a candidate usually began with some established standing as a leader, and in any case he had to be acceptable to, and accepted by, the elite. During the campaign, then, the party organization was prepared to mobilize its adherents on the candidate's behalf, and after the election, it was prepared to follow his lead.

But both as a cause and a consequence of the disintegration of parties has come the explosion in the 1970s of the presidential primary. As the primary method of selecting convention delegates has spread to most of the states, and as the others have adopted—under directives from the national parties—widely participatory caucus systems, the party's screening function has all but disappeared. Now a presidential candidate may be someone who is in no sense the natural leader of his party, who has no ready and established following among the party's senators and representatives. Indeed, he may be someone who has campaigned *against* the party establishment, including its congressional leadership, and who arrives in Washington in an atmosphere of suspicion and hostility. He may be someone without experience and skill in dealing with the members of the Congress he is supposed to lead, perhaps without even any extensive acquaintanceship with them. All of this was the case with Jimmy Carter, and it goes far toward explaining the difficulties in executive-legislative relations that developed at the outset of his administration and characterized—although with some improvement toward the end—his entire term.[39]

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[38] *Toward a More Responsible Two-Party System*, pp. 14, 95.

But, to lessen still further the prospect for united government, the president may not even be a member of the party that controls the Congress, much less its leader. With the disintegration of political parties in the United States has come a decline in straight-ticket voting. In choosing among candidates for president, Senate, and House, the voters are influenced by their party preference but also by their estimates of the candidates' personal competence and character, particularly in presidential voting, and by local and district considerations, especially in electing representatives. As the result, while the voters chose a Republican president in four of the last seven elections—from 1956 through 1980—they returned a Democratic House on all of those occasions and a Democratic Senate in all except the last. Thus, more than half the time, control of the government has been divided—something rarely known before the past quarter-century.

At such times, the normal tendency of the American system toward deadlock becomes irresistible. The president and the Congress always pledge themselves to seek harmonious collaboration, but ultimately they are compelled to quarrel. No presidential proposal can be accepted by the opposition in the legislature without raising the stature of its partisan adversary. Simi-

[39] A *Washington Post* poll taken in July 1979 found that two-thirds of the people felt that President Carter and the Congress had not worked well together. Of those, 86 percent said that lack of cooperation was harmful to the country. They absolved neither side, although they considered the legislature somewhat more at fault. *Washington Post*, August 5, 1979. Early in the Watergate period, in February 1973, a Louis Harris poll found that a majority of respondents with opinions believed that it was good for the country to have a president of one party and a Congress controlled by the other, because it kept both president and Congress in line. Fifty percent thought divided government was better and 29 percent worse, with 16 percent saying it made no difference, and 5 percent with no opinion.

larly, no initiative of a Congress controlled by his opponents can be approved by the president without conceding wisdom to his political enemies. Sometimes, to be sure, the lack of cohesion within the Democratic party has enabled Republican presidents to lead effectively on some matters with the support of a bipartisan conservative coalition, especially when the Democratic majority has been a narrow one. But such coalitions tend to be loosely organized and unstable, for Democratic conservatives are subject to conflicting pressures; and, in any case, the resources of the leadership and most committees and subcommittees are in the hands of Democratic moderates and liberals anxious to distinguish their party position from the president's. So in times of divided government, the natural struggle between the parties for political advantage inevitably spills over—sooner or later, depending to a great extent on how well the president's public popularity holds up—into a struggle between executive and legislative branches. The bickering and tension that are rarely absent from relations between the branches are intensified, tending toward open conflict and recrimination of the kind that marked the last years of Eisenhower's term and virtually the whole of the Nixon-Ford period.

If the trend toward disintegration of political parties could be reversed, their revival would strengthen the ties between president and Congress without having to alter the Constitution, or establish joint executive-legislative mechanisms, or even create new party structures. Unfortunately, the outlook for party renewal is not much more favorable than the prospect for basic constitutional or institutional reform.

For the revitalization of political parties cannot be willed. If it could be, it already would have been; party leaders have not lacked the desire to preside over stronger organizations. But the people who are not now identified with either party—more than half the voters in the youngest age brackets consider themselves independents—will not commit themselves to parties, support them, and believe in them as an end in itself. They will join a party only when they see it as a useful means toward achieving some other desired end. Some attachments are formed in every election, while others are weakened or broken. But a massive reversal of the trend toward political independence must await the appearance of some great issue—like the slavery question in the 1850s, or the plight of the farmers in the 1980s, or relief of hunger and unemployment in the 1930s—which arouses the country and impels people to seek solutions through the political and governmental system. At such times the voting public is polarized, and new parties spring into being or old parties take on new meaning, because they become instruments for the achievement of goals about which the voters deeply care.[40] Yet powerful issues come and go, and when they have gone the parties may lack relevance to new issues that arise. The last period of polarization, when the current alignment of the two-party system was shaped, is almost half a century old and the Democratic and Republican symbols have lost much of the meaning and appeal they then possessed. But revival depends on something happening outside the parties themselves—some kind of sustained crisis that will arouse the people, polarize them, and impel them to organize politically, through parties, to attain their ends. In short, the party system is a dependent, not an independent, variable.

On the other hand, even as the parties have become weaker, the gradual realignment of the party system that is taking place—especially in the South, which after decades of lag is slowly conforming to the national liberal-conservative alignment of Democrats and Republicans established in the 1930s—makes both parties more homogeneous ideologically in the nation at large. This is reflected in the Congress and is a force for cohesion there in an era of individualism. Ideological kinship will also facilitate cooperation between presidents and their congressional party colleagues.

## Comity within the System

All the broad avenues toward fundamental reform to ameliorate the unending conflict between the branches seem, therefore, to be closed. Grafting some features of the parliamentary system to the American constitutional structure might help, but the issue is academic; basic change in the Constitution is impossible. Formal merger of legislative and executive powers in a joint cabinet or council runs counter to the self-interest of the responsible politicians in each branch in maintaining their freedom of decision and independence of action within their respective spheres. The responsible party solution runs afoul of the same objection. Restoration of strong political parties as the tie that binds the branches is beyond anyone's control, dependent on the emergence of new forces and events that will arouse a mass public desire to form and utilize parties to attain political ends.

That leaves the question of how the system of relationships between the branches, as they now exist, can be made to work better. The four Cs enunciated by President Ford in his first address to the Congress—communication, conciliation, compromise, and cooperation[41]—define well the goal. But there are no panaceas to secure them. No systematic improvements in the tone and practices of interbranch relations can be adopted and fixed permanently in place, as by a constitution or a statute. The only recourse left for those who worry about the disunity of their government is exhortation, the offering of gratuitous advice to presidents and congresses and to voters who elect them. Exhortation will not satisfy the souls of systems designers, but it is the only option that is practically available.

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[40] The processes of party realignment and renewal are analyzed in James L. Sundquist, *Dynamics of the Party System: Alignment and Realignment of Political Parties in the United States* (Brookings Institution, 1973) and in works cited there; chap. 13 is a theoretical summary.

*Presidential Behavior.* Some of the more obvious lessons for presidents, or those who would become presidents, can be drawn from well-publicized mishaps of the Carter administration. At the outset, a would-be president should not get off to a bad start by campaigning against the Congress and the rest of the Washington establishment—even if that appears to be the easiest road to the White House—because he is going to have to work with them when he gets there. On taking office, a president should staff his office of congressional relations with persons who know the Congress and can interpret it to him, as well as him to it, and who will do the little things—like returning congressional telephone calls—with care and dedication. Other White House aides should be reminded that they are congressional relations officers too and must behave accordingly (cabinet and subcabinet officers will not need to be reminded).

The president's legislative program and schedule should be planned through genuine collaboration with his party leaders in the Congress; the weekly meetings instituted by Franklin Roosevelt are still as good a technique as any. Unilateral commitments by the president as to what the Congress will or must do, and when, must be avoided. The timing of messages transmitting legislation should be worked out with the leaders, and the priorities should be scaled down to what the Congress can be reasonably expected to handle. The president should not let himself appear to be picking fights with the Congress, as Carter did when he chose to make an issue of local water projects at the very opening of his term.[42]

Yet it is not easy for a president to form a genuine partnership with the Congress, no matter how earnest his intention. The problems of policy formulation *within* the executive branch on any complex matter are so enormous—the data that must be analyzed, the departments and agencies and interests that must be reconciled, the outside views that must be taken into account—that the responsible policymakers often have all they can do to resolve their differences and arrive at an administration position without the added complication of trying to incorporate the views of the congressional majority, which to make matters worse is likely to be in serious disagreement within itself (and which may be led by the administration's partisan opponents). So once the executive branch has reached its own conclusion, the impulse is always strong to encase the policy in a presidential message so that all the settlements and compromises will not have to be reopened.

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[41] "Address to a Joint Session of the Congress, August 12, 1974." *Public Papers of the Presidents: Gerald R. Ford, 1974* (GPO, 1975), p. 7.

[42] Thomas E. Cronin, "An Imperiled Presidency," *Society*, vol. 16 (November/December 1978), pp. 59–60.

Having taken his position, the president is then obliged to fight for it, if he is to maintain the image every president seeks as a person of principle and courage. But this, of course, is what offends the Congress; its members don't like to be given their marching orders from downtown, handed their policies on a take-it-or-leave-it basis, with the implication that if they leave it they are doing so for narrow, parochial, benighted, or even corrupt reasons.

Yet the periods of fruitful executive-congressional collaboration, such as those of the early years of the Wilson, Franklin Roosevelt, and Johnson administrations, show that mutual goodwill and harmony can at times be attained, even though not necessarily sustained for long. The explanation probably lies less in the skill and tactics of a president in communicating with and handling the Congress—which are generally overrated as the determinant of presidential success with the legislature—than in a wholly external factor, his standing in the country. A president who wins by a landslide, carries both houses with him, and runs ahead of his congressional candidates, as Lyndon Johnson did in 1964, will get off to a good start with the Congress no matter how he deals with them—although Johnson's experience and skill did stand him in good stead until he overplayed his hand and drove the legislators too hard. Conversely, a president who slips into office narrowly, running behind his ticket, like Kennedy in 1960 or Carter in 1976, begins at a disadvantage, even if he handles his congressional relations with finesse. Later, however, if the president maintains a high rating in the public opinion polls and seems to be headed for reelection, his party in the Congress will be inclined to accept his leadership. To the extent he is in command of the country, in other words, he is likely to be in command of his party in the Congress, too. Among other things, a popular president can always go over the heads of the Congress and appeal to the people; senators and representatives know that and try to avoid giving him the excuse to do so. Conversely, when the president stands low in the polls and threatens to drag his party down with him in the next election, the legislators will dissociate themselves from his policy positions and find reasons to oppose him.[43]

*Congressional Behavior*. As a generalization, the Congress should strengthen its capacity to do the things that it does best, and that the executive branch cannot do, and should stop trying to do what it can do only poorly and the executive does better. The special strengths of the Congress, like its weaknesses, arise from its representational role; the other side of parochialism is responsiveness and sensitivity. Congress as representative provides the citizen access to the policymaking process, makes possible a personal relationship to government that can help to offset the impersonality of the administrative agencies. The Congress can set localism against centralism, the micro view of events against the macro view. It can improve national policy by bringing to bear on the executive branch's proposals a sensitive regard for the local and individual consequences of policies designed from the national perspective.

Collaboration is therefore not only a practical imperative but a theoretically desirable end. But Congress can make its own mistake if it permits parochially minded members who occupy strategic committee posts to impose their own policies on the country, or if it assumes that an amalgam of local interests arrived at through logrolling is the equivalent of the national interest. The party caucuses have recaptured the power to instruct and to discipline chairmen and committee members who do not respond to the sentiment of the caucus membership, and this power should not be allowed to lapse through disuse if circumstances again arise that demand its exercise.

The representational role of the Congress gives it a special competence for oversight of administration, but while the potential for constructive contribution in the review of administrative processes and actions is immense, so is the potential for abuse. The boundary between useful and damaging oversight cannot be drawn with precision, and the Congress can only be admonished to proceed vigorously with the former but abjure the latter, in the hope that common sense will somehow define the difference, case by case. With the multiplication of provisions for legislative veto, the potential for inappropriate and burdensome intrusion into administration becomes even greater, and the Congress should add new vetoes with great restraint,

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43. Jon R. Bond and Richard Fleisher, "The Limits of Presidential Popularity as a Source of Influence in the U.S. House," *Legislative Studies Quarterly*, vol. 5 (February 1980), pp. 69-78, found that as a president's public popularity rises, he gains significantly in support from his own party but loses support from opposition members at a lesser rate. Doe C. Shinn, "Toward a Model for Presidential Influence in Congress," paper prepared for the 1980 annual meeting of the American Political Science Association, likewise found that the president's public popularity rating is an important factor bearing on his level of congressional support.

only in individual cases when the need is demonstrable beyond a reasonable doubt.

Individual members need to recognize that the trend toward individualism in the Congress can go too far. For the Congress to legislate efficiently and responsibly requires some reasonable degree of cohesion within the majority party, and that in turn requires a subordination of personal and local self-interest to the will of the party majority. The centralizing instruments of the controlling party—that is, its leadership, policy and steering committees, and caucus—need to be more assertive, and given stronger powers if necessary, to balance the forces making for dispersion and fragmentation of power. The need for cohesion within the majority party is especially great whenever the legislative body is controlled by the party opposing the president, or when it rejects his leadership for any other reason. Then the majority leadership should take the initiative to use the caucus to help define and build a consensus around party policy, based on preparatory work assigned to existing policy committees or ad hoc bodies reporting to the caucus. Steps in this direction go against the grain of the men and women who make up the Congress these days, but that is the direction in which the institutional structure should be moved. Special bipartisan committees to integrate policy in each house, like those created by Speakers Albert and O'Neill, also show promise for use on a more regular and expanded scale.

The Congress will never have the capacity to play its full potential role in government until that last, anachronistic institutional barrier that prevents the legislature from acting when a majority is ready to act—the Senate filibuster—is modified to permit the majority to rule after an issue is fully debated.

*Voter Behavior.* The individual citizen and voter should act to protect and strengthen the web that gives to the government its semblance of unity—the political party. If, as a corollary to that action, the voters curb their penchant for splitting tickets, they can save the country from divided government.

## The New Equilibrium

The conflict is unending. But its tone, and its terms, and the balance between the combatants, change constantly. The 1970s were a period of upheaval, of change so rapid and so radical as to transform the pattern of relationships that had evolved and settled into place over the span of half a century or more. But by the end of the decade the spirit of resurgence, at least, had waned. The Congress seemed for the most part satisfied with what it had achieved in its quest for equality—except for the agitation for further legislative vetoes. Members no longer complained of an overweening and overreaching presidency, and presidents, since 1977 at least, seemed in general to accept the new balance of power that had been reached. So the 1980s should be a period of relative stability, with a new cycle of slow decline of the Congress in favor of the president probably beginning some time in the decade.

Meanwhile, there are grounds both for foreboding and for optimism in the institutional and behavioral changes that the period of congressional resurgence has brought about. On the negative side, the new assertiveness of the Congress has not been fully matched by new capability, by institutional forms that would assure responsibility in the more aggressive exercise of power. The weaknesses that arise from the fragmentation of the Congress have not been wholly overcome; that would require the development of strong centralizing institutions, and that runs counter to the temper of the times.

On the positive side, however, of immense significance in the long run will be the destruction during the 1970s of old barriers to effective and responsive government. The obstacles to harmonious legislative-executive relations and constructive legislative achievement so apparent in the 1930s, the 1950s, and even the 1960s have for the most part been overcome. The enemies of governmental competence then were the absolutism of the seniority system in both houses, the obstructionist power of the Rules Committee in the House, and the filibuster in the Senate. Of these, the first two have been destroyed and the third has been modified.

In a sense, no relationship between president and Congress is ever normal, for the country passes from one special pattern of association to another, each influenced by the unique personality of a president, a particular configuration of congressional leaders, and the political setting of the time. Yet the beginning years of the congressional resurgence were, by any standard, more abnormal than most, with executive-legislative relations reduced to a level of bitterness matched perhaps only during the time of President Andrew Johnson. In 1977, when one period of divided government came to a close, a tone at least of cordiality reappeared, and it continued into at least the early months of the new period of division that began in 1981. While the conflict between the branches is unending, it has not always been so acrimonious nor so destructive of the governmental process as it was during much of the decade of the 1970s. Nor, in all likelihood, will it be so soon again.

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# *Britain and America: The Institutionalization of Accountability*

WILLIAM S. LIVINGSTON

THE TOPIC OF THIS ESSAY is one that has challenged the concern of political scientists and other mortals for a number of years, namely the similarities and differences between the political systems of Great Britain and the United States. My excuse for re-examining the subject at this time is that we are especially concerned these days on both sides of the Atlantic with the provisions of the two systems regarding the institutionalization of democratic accountability. It is that particular problem to which I wish to address myself. It is not an easy topic, except on the most superficial level, and I have never felt that my own attempts to deal with it have been quite satisfactory—perhaps because of the difficulty of defining terms and perhaps because of the uncertainty in determining the level of generality at which the analysis is to be pitched. It does seem singularly appropriate, however, in this bicentennial year, to take account of some of the considerations that led our forebears to contrive a system of government so different from that to which they were accustomed—all the more so since in the past few years, there has been a spate of proposals suggesting that various elements of the British system should be grafted onto our own, as a means of preventing any recurrence of that mixed bag of evils we lump together and call "Watergate."

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[*] Presidential Address delivered at the annual meeting of the Southern Political Science Association held in Nashville, Tenn., November 6-8, 1975.

This paper was first delivered as a presidential address, and presidential addresses are very dangerous things. They invite pontification, and they have a tendency to be both banal and didactic, testing the humility of the speaker as well as the tolerance of the audience. Too, they often focus on rather grandiose themes, since the speaker sees his opportunity to bring his rich experience directly to bear on some of the society's—or the profession's—greatest concerns. I plead guilty at the outset to a belief that my topic is an important one, and I shall do my best to avoid both banality and diffidence—even if I occasionally fall prey to grandeur.

It is not necessary here to dwell at length on the events of the 18th century, but since those were the formative years of both political systems it will be useful to examine some of the purposes and consequences of constitution-making in the two countries in that era. The American constitution and the authors of it were strongly influenced—both positively and negatively—by the British model. In some cases, there was a deliberate adaptation of British practice to American needs, and in other cases, the British practice was simply incorporated into the American scheme without anyone's thinking seriously about it. The content and technique of the common law, the organization and procedure of legislatures, the fashions of local government, the structure of the judiciary—all these things were adopted more or less faithfully from the British model. On the other hand, a number of quite fundamental institutions in the American system marked a direct reaction against things British, and were adopted by the Americans as a means of avoiding problems which they perceived as prompted by British error. Republicanism, the formal attempts to curb the executive, the whole array of institutions that came to be called "limited government"—all these ran in a direction opposite to the institutions of Great Britain. Beyond this, the authors of the American constitution embraced several principles (of varying degrees of novelty) which they derived from the 180 years of the Americans' own experience of government and politics. The written constitution itself may be said to have come from the colonial experience, and with it the principles of federalism, judicial review, and above all, the separation of powers. All these taken together created a theme that runs throughout the American constitution, namely, the fragmentation or diffusion of power, which stands in sharp contrast to the constitutional system that was simultaneously evolving in Great Britain.

The corresponding—and equally distinguishing—principle of the British political system has been the concentration or fusion of power. This may be seen in two sharply different ways. First, there is an *his-*

*torico-legal* explanation of the concentration, which manifests itself in the sovereignty of Parliament, a fundamental principle, which, though disputed by Americans in the 18th century, was nonetheless clearly established by 1689 and clearly understood in Britain as the 18th century wore on. The struggle for individual liberty in Britain had been a struggle by Parliament to limit the king, for the king was seen as the threat to freedom, and curbing the king was the means by which tyranny was to be thwarted. Thus Parliamentary sovereignty was pursued, and was understood, as a palladium of individual liberty. But when that Parliamentary sovereignty, which had been gained at such cost of blood and battle, was employed to impose regulatory legislation and taxes on the Americans, the Americans saw the Parliament as threatening their liberties in the same way and to the same extent as the English had seen the king as threatening theirs. It was no solace to the Americans to explain that the Parliament which they felt was improperly taxing them was in effect their principal protection against the king, for the Americans had their own legislatures fully equipped with authority to make laws and impose taxes. There is a monumental irony, however, in the contrary views of the Parliament held in Britain and in America, for the colonies' argument, and eventually the colonies' struggle, was against the imposition by that same Parliament of taxes and laws which they considered to be improper and unlawful.

There is also in Britain a *political-constitutional* manifestation of the fusion of power that is still more significant, namely, the concentration of governing authority in the Cabinet, but a Cabinet rendered responsible to the Parliament by techniques that were only gradually evolved in the course of the 18th and 19th centuries. Responsible government in Britain may well be traced back to the 17th century struggles with the king, and perhaps to the execution of William Laud and the Earl of Strafford. But the significant development took place in the middle and late 18th century: it transformed the principle of accountability from one that perceived the opposition as criminal into one that accepted it as legitimate but denounced it as politically inept. The experience of the 18th century—and particularly that of the two William Pitts—yielded a principle by which kings governed through ministers who were accountable not to the king, but to the Parliament, for the way in which they used the power to govern.

There emerged, therefore, two quite contrary principles in Britain and the United States. Both were designed to give representation to the people of the nation; both were designed to preserve liberty against a threat of tyranny; both were designed to afford equal justice under the law. But the techniques by which these objectives were to be achieved differed sharply.

The American constitution concentrates on the curbing of governmental power—on dividing it among a variety of governmental agencies and making sure that the total power of the state cannot be concentrated in one set of hands. The British system, on the other hand, is designed to concentrate power in a single set of hands—legally the Parliament, politically the Cabinet—and then provide adequate means by which the users of power are held accountable for the way it is used. The American Constitution seeks to preserve liberty by preventing the too effective use of governmental power. The British constitution protects it by providing means by which the users of power are rendered accountable to the people whom they are intended to serve. The methods by which the British government is held accountable are subtle and many. They rest principally on convention rather than law, and they are often difficult to discern and analyze. And it is these methods that make it so very difficult to import and adapt British institutions into other political settings—as is clearly illustrated by the experience of France or Nigeria, or even Canada and Australia.

The British parliamentary system has always had a very strong attraction for political reformers in America, and particularly for academic reformers. It appears to be a neat, coherent arrangement. With its disciplined two-party system, the sovereignty of its Parliament, the array of institutional devices by which the Cabinet is held accountable to the Parliament, and through the Parliament, to the people, it seems to provide a rational and workable scheme of government which is at once both effective and responsible. And that combination of effectiveness with responsibility has had an enormous appeal, both for political theorists and for students of comparative politics. France, on the other hand, lacking the disciplined two-party system of Great Britain, and differing from her in many other respects, has rarely been able to combine the two principles and consequently has alternated between irresponsible power and ineffective accountability. The United States system was never meant to be effective in the same sense, nor was it meant to be responsible. The President is an independent—not a responsible—executive, and effectiveness has always taken second place to the preservation of liberty. The American system is an institutionalization of buck-passing, and the frictions inherent in it have often led to disappointment and frustration on the part of both practitioners and academic reformers, who yearn for a scheme that combines effectiveness with accountability, democratic control with democratic liberty.

In the aftermath of Watergate, this admiration for the British system seems to be intensified, and many who believe that the solution to the problems posed by Watergate lies in institutional reform summon us again to adopt various elements of the British system. Watergate meant many things—and different things to different people—but to many it has stood for the unexampled hypertrophy and irresponsible abuse of presidential power. The ultimate device of responsibility in the British parliamentary system is that the Prime Minister and his Cabinet must give way if confronted by an adverse vote, a vote of no-confidence, in the House of Commons. Thus the people's representatives in the House have an ultimate authority to drive an unacceptable executive from office. To many Americans from Woodrow Wilson on, that device has offered the ultimate solution to the problem of irresponsible government in America. In the old days, we had the testimony of William Y. Elliot and Thomas K. Finletter.[1] Nowadays similar proposals come to us from Morley Ayearst, James L. Sundquist, and indeed from Sen. Edward Kennedy.[2] If Americans would only give Congress the power to expel a president by an adverse vote of various sizes, the problems of the irresponsible executive would be solved. Britishers, too, occasionally join in the chorus. Professor J. H. Plumb tells us that there is "an embryonic dictatorship in the womb of the presidency" and that the potential for executive dictatorship will always be with us until "the president and his staff [are] made more directly accountable for the daily actions of government. . . . The best check on any executive [he says] is for it to be answerable day-by-day both to a party and to a legislature."[3] Mr. Alex Comfort tells us that "Mr. Nixon could not have done what he did if he were Prime Minister, because he would be continuously having to face both the House and his colleagues." And Lord

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[1] William Y. Elliott, *The Need for Constitutional Reform* (New York: McGraw-Hill, 1935). Thomas K. Finletter, *Can Representative Government Do the Job?* (New York: Reynal & Hitchcock, 1945).

[2] Morley Ayearst in *The New York Times*, August 5, 1973; James L. Sundquist in *The Brookings Bulletin*, vol. 10, no. 4, 7; for Senator Kennedy see an article by Linda Charlton in *The New York Times*, November 17, 1974.

[3] J. H. Plumb, "Inflation, Frustration and Tea," *The New York Magazine*, June 10, 1973, 20 ff. at 24.

Ritchie-Calder observes that Watergate "could have happened in Britain, but it could never have been covered up."[4]

When people talk of adopting elements of the British system, they may mean any or all of several different things. In connection with the post-Watergate lamentations, they usually mean some combination of the power of dissolution with the principle of resignation when confidence is lost. The looming threat of a vote of no-confidence is seen as a continuous restraint upon the executive branch, compelling it to conduct itself in accord with the highest ethical principles and in accord with the will of the people as expressed in the composition and voting of the House of Commons. But the proposal to produce responsibility in America by subjecting the president to votes of no-confidence in Congress rather misses the point of the British system. The vote of no-confidence is only an ancient, legalistic, and formal mechanism of accountability; it is only rarely used and only rarely effective, even as a threat. To assume that the Prime Minister is held accountable by the continuing threat of a no-confidence vote is comparable to enforcing traffic laws using capital punishment as the only sanction. The system simply will not work that way.

The real accountability of the Prime Minister and Cabinet is exercised through a variety of institutions, arrangements, and understandings, and the curbing of the abuse of power in Great Britain does not hinge merely (or even mainly) on the instruments of responsible parliamentary government. It depends upon a variety of conventional agreements, ancient manifestos, common-law precedents, and the ambiguous, but pervasive idea that certain things "just aren't done." The real techniques of accountability in Britain, and consequently the ultimate rationalization of British democracy, are found in a variety of other arrangements: through the channels of the party, and especially the parliamentary party; through the procedure and spirit of the House of Commons with its elaborate provisions for the satisfactory performance by the Opposition of duties that the constitution assigns to it; through the pattern of debate and the conduct of affairs at Question Time; through the Prime Minister's relations with the senior Cabinet members and the senior civil servants; through the Prime Minister's constant need to conciliate political factions within his own party; and above all through the ultimate threat of the next election, which hangs over government and Opposition alike.

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[4] Alex Comfort and Lord Ritchie-Calder participated in a round table at the Center for the Study of Democratic Institutions. It is reported in *The Center Magazine*, November-December, 1974, 18-24.

Let me turn now to one or two of these elements of accountability that would seem to be extraordinarily difficult to reproduce in America. One of these is the rather special relation, often a real tension, between the Prime Minister and the senior civil servants, a relation to which Mr. Richard Neustadt called attention some years ago.[5] The senior officials —not politicians, but permanent civil servants—are not beholden to the Prime Minister, but are necessary to the satisfactory conduct of his policy. He can often enlist them as his allies, he can count on their conscientious and competent contribution to policy development and execution, but he cannot *command* their allegiance or support. He must solicit it by persuasion; by personal influence; by working through committee channels that are often controlled by them, not him; and by working through his ministerial colleagues who preside over the departments in which these senior officials are to be found. The point is, of course, that the senior civil servants have an expertise and hence an autonomy that make them more necessary to the Prime Minister than he is to them.

A still more important limiting factor—and one that is definitely un-American—is the extent to which the Prime Minister is still dependent upon the co-operation and support of his senior colleagues in Ministry and Cabinet. The fashion these days is to point to the extent to which the Prime Minister has come to dominate the political process in Britain, a dominance that has led many Britishers to the conclusion that theirs has now in effect become a "presidential" system of government, masked only by some outworn ceremonial gestures to the ancient principle of Cabinet solidarity. In my view, the obituaries for the Cabinet system are premature, and if it is true to say that the functions of the Cabinet are different today from what they once were, it is no less true that a Prime Minister seeking to rule outside or in defiance of the Cabinet would quickly find himself in deep trouble. One of the difficulties of attempting to meld the American presidency with a principle of accountability is the very uniqueness of the presidency itself. The British Prime Minister is *not* in the same position of autonomy and independence; he is part of, and dependent upon, the collegiality, will, and coherence of the Cabinet as a corporate entity. The members of the Cabinet are not merely his subordinates, they are his colleagues. All of them assume responsibility for the acts of each. The Prime Minister has reached his position of eminence—at the top of the greasy pole, in Disraeli's phrase—only after many years of life in the party and in the House, working with, competing with, and coming to terms with, the other senior members of the party. It is impossible for a Prime Minister or a senior Cabinet Minister to come into a position of power by lateral movement from outside the House. Cabinet Ministers grow up in the House, and demonstrate in the life of the House that they are capable of holding Cabinet rank. This does not happen all at once. Indeed the process is frequently protracted. Every Prime Minister in the 20th century has sat in the House of Commons for several terms and has served as Minister in somebody else's Cabinet before himself becoming Prime Minister. Thus there is a close familiarity and interdependence between the Prime Minister and his senior Cabinet colleagues that has no counterpart in America. Of course it's true that Richard Nixon came up through Congress as well—so there is no real guarantee of probity in this principle—but Nixon still came in from the outside, chosen in 1952 by Eisenhower, not because he was a leader of the Congress, but because he caught Eisenhower's eye as someone he could use and depend upon. The point is not, however, that all American presidents come from the outside, but that all Prime Ministers come from the inside; they reach the top office only after a long-developed political intimacy with colleagues who are also party leaders and whose support is essential to the Prime Minister's success. There is nothing comparable to that progress in the American system. The president is not primus inter pares, he is primus—and he is not restrained by the need to conciliate and work with fellow office-holders with whom he shares a collegial responsibility. Those office-holders are not his colleagues, but his subordinates. Thus, importing the confidence-vote principle won't do the job. There are too many other things that make for responsible government in Great Britain, above all the Prime Minister's relations with his colleagues in the Cabinet.

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[5] Richard E. Neustadt, "White House and Whitehall," *The Public Interest*, No. 2, Winter, 1966, 55-69.

But the emphasis on the confidence vote continues to seduce and delude us. No doubt there was a day when the British system afforded a genuine balance between Cabinet and Commons in which the power of the government to dissolve the House was balanced by the power of the House to expel the Cabinet. That was the traditional explanation of the capacity of the British system to combine responsibility with effectiveness. But as Don K. Price argued some 30 years ago, ". . . the

British in effect did to the House of Commons what the Americans did much earlier to their Electoral College: they made it an automatic machine for registering the vote of the people. . . ."[6] What produced that transformation, of course, was the emergence of the disciplined, two-party system, which has made it virtually impossible for the House to perform the function which the traditional constitution assigns to it. The party machinery enables the Cabinet to control the House, not the House to control the Cabinet. In the 19th century, when it might be said that the House could dismiss governments in whom it had no confidence, the House was able to do so not because parties were disciplined, but because they were not. In the days before the mass party and before the Corrupt Practices Act, members of Parliament were regularly "regarded essentially as local representatives, whose duty it was to speak for their constituents only. . . ."[7] In those days, too, elections, at least in marginal constituencies, could be and were bought and sold. That kind of venality tied the MP to the local proprietors, local interest groups, and local concerns, and accordingly it preserved his independence of the whip and the party leader. That very independence gave to the MPs of the governing party in the House "a possibility of action aside from or against their Prime Minister. One could then speak of constituency interests and of assembly pressures upon the executive in England as one now talks of them in America."[8] In these days, when we hear so many suggestions that public ethics in America might be improved by importing elements of the British system, there is a gratifying irony in pointing out that it was only the corruption in the constituencies that gave to the private members in the House the capacity to expel leaders no longer acceptable to them.

But those days are now gone. A system of accountability that was once rationalized by the balance between the Cabinet and the House has been transformed into one rationalized by the competition and balance between two disciplined, centralized, political parties. The function of holding the government accountable, which was once said to be performed by the House of Commons, is now performed, if at all, by the Opposition party. It is in the competition between the two parties that government is held responsible—a competition manifested at Question Time, in the character of debate in the House, and in the competition on the hustings, in the press, and in the polling booth. The essential fact about governmental responsibility in Britain is that the government must always defend itself before a skeptical Opposition and a skeptical public. The power of the House to control and oversee the government does not depend upon its ability to register a formal vote of no confidence. "It consists rather in [its] ability to compel [the Prime Minister] and his colleagues to justify their conduct continuously before a large, politically sophisticated, and critical audience." As Alexander Groth has said, "It is not the loss of a vote of confidence which the British executive must dread, but the loss of face."[9]

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[6] Don K. Price, "The Parliamentary and Presidential Systems," *Public Administration Review*, Vol. III, (Autumn, 1943), 317-334 at 319.

[7] Cecil S. Emden, *The People and the Constitution* (Oxford: The Clarendon Press, 1956), 5.

[8] Kenneth N. Waltz, *Foreign Policy and Democratic Politics: the British and American Experience* (Boston: Little, Brown & Co., 1967), 38-39.

The point I make here is a simple one. It is that the devices of accountability in the British system do not depend upon the formal practices to which our textbooks continue to pay lip service, but to a set of informal practices and conventional usages that center around the character of the British political party. There is little point in Americans' efforts to produce British results in a setting to which British institutions are alien. Above all, there is little point in our adopting the no-confidence vote unless we find some way to change the nature of American political parties.

Political scientists and other realists have understood this matter for many years—indeed since long before the APSA-Schattschneider Report of 1950—and many have felt that the only way America can combine effectiveness with responsibility is to devise institutional reforms to recreate in America a responsible party system like that in Great Britain.[10] That was the thrust of the Schattschneider Report[11] and, more recently, it is the argument of Professor Charles Hardin's *Presidential Power and*

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[9] Alexander Groth, "Britain and America: Some Requisites of Executive Leadership Compared," *Political Science Quarterly*, June, 1970, 223.

[10] The classic study of the responsible party system as the instrument of (or obstacle to) democracy is that of Austin Ranney, *The Doctrine of Responsible Party Government: Its Origins and Present State*. Illinois Studies in the Social Sciences, vol. 34, no. 3. (Urbana: University of Illinois Press, 1954).

[11] Students and romantics who are nostalgic about the 1950 Report should not overlook two retrospective pieces reappraising the report after twenty years. See E. M. Kirkpatrick, "'Toward a More Responsible Two-Party System': Political Science, Policy Science, or Pseudo-Science?" *American Political Science Review*, December, 1971, and Gerald M. Pomper, "After Twenty Years: The Report of the APSA Committee on Political Parties," *Journal of Politics*, November, 1971.

*Accountability.*[12] Without arguing the point here, I shall just say that I have little faith in the capacity of America to reform its system in that direction. More interestingly, I find it ironic that just as American voices for reform are rising again to a high pitch, there is rising simultaneously in Britain a demand for a reassessment of the character of *her* political parties. In a recent paper, Professor Dennis Kavanagh has summarized some of the current critiques. British government was once characterized as effective and responsible, and British parties as disciplined, centralized, and programmatic. There is now, however, he says, "a different vocabulary, of stagnation, immobilism, and crisis in place of incrementalism and stability. These terms were, ironically, often used to describe the political process in Italy, France and the United States in the 1950s *as a contrast to the British.*"[13] People like Richard Rose, Samuel Finer, and Samuel Brittan[14] are now suggesting that British parties are poorly equipped to direct the government; that they are pressure-ridden; that government programs are not coherent; and that issues are as often decided within the parties as between them —the same sort of critique that has been made of American parties, and one that would be familiar to the "engineers" of more responsible parties in America. The irony, as Kavanagh points out, is that twenty years ago, the reformers were looking to Britain for their inspiration.[15]

The problem is confounded in contemporary Britain by the very close balance between the two major parties in recent elections, which has already deprived the government of a working majority in one election, and is likely to do so again. In addition, the minor parties and particularly the regional nationalist parties are winning some seats and earning many more. The basis for the disciplined, responsible two-party system in Britain is challenged both by political scientists and by events.

If America is to adopt British institutions that work the way they do because of the responsible party system, then American political scientists—doctoral students take note—had better turn their attention to the changing character of the British party system and ask some serious questions about the extent to which it can still be characterized as responsible. Parenthetically, and perhaps surprisingly, I may call attention to the fact that I have carefully resisted the temptation to introduce into this discussion any consideration of the extent to which the United Kingdom is becoming a federal state. That too, however, is germane to this discussion.

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[12] Charles M. Hardin, *Presidential Power and Accountability: Toward a New Constitution* (Chicago: University of Chicago Press, 1974).

[13] Dennis Kavanagh, "Research in British Politics: A Forward Look," paper delivered at the 1975 meeting of the American Political Science Association, 1.

[14] Richard Rose, *The Problem of Party Government* (London: Macmillan, 1974); S. E. Finer, "In Defence of Deadlock," *New Society* (5 September 1974); Samuel Brittan, "The Economic Contradictions of Democracy," *British Journal of Political Science*, vol. 5, 1975.

[15] Kavanagh, "Research in British Politics," 7-8.

Leslie Lipson once argued in *The Democratic Civilization*[16] that "all democracies have to cope with a contradiction which is inherent in power itself: if used, it may be abused. How does one provide for the former and prevent the latter?" That is the consideration that lies at the heart of the problem of responsibility. The institutionalization of executive accountability in Great Britain was very chancy and very difficult. It was produced by the evolution of a congeries of conventions and by the emergence of a disciplined two-party system. The institutionalization of accountability in the United States is even more difficult, in part because there is no comparable party system and in part because the constitution itself runs counter to the principle that the Executive should answer to the Legislature. To quote Lipson again, "The Cabinet dominates Parliament because it dominates the dominant party. Wherever this fundamental political condition is lacking, the institutions of Cabinet government will not operate in the same way because they cannot."[17]

The Watergate revelations have provoked a rash of reform proposals, many of which are drastic in character and extent. Some critics, like Leland Baldwin and James L. Sundquist[18] would subject the President to a vote of no-confidence. Others like Rexford Tugwell or Charles M. Hardin[19] would restructure the Congress and the parties to produce a "responsible party system" without going so far as to institute the vote of no-confidence. Most of these reform proposals rest on the belief that Watergate was the product of a fatal flaw in the American system or that a constitution designed for 18th century needs is inadequate to 20th century problems—or both. A special panel of the National Academy of Public Administration, headed by Frederick C. Mosher and created by the Ervin Committee, examined most of the current proposals and concluded unequivocally and persuasively that it was "unanimously opposed to basic changes in the American constitution in the direction of Parliamentary government."[30] I strongly agree with that conclusion. Such reforms fail to take account of the ineffable plurality of American politics, of the inexorable decentralization of our parties, of the strength of our commitment to federalism and the separation of powers. Of course it is perfectly true that a parliamentary system has been several times combined with weak parties or a multi-party system, but just to the extent that that combination is attempted, so is the Executive weakened and the lines of accountability obscured.

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[16] Leslie Lipson, *The Democratic Civilization* (New York: Oxford University Press, 1964), 478.

[17] *Ibid.*, 501.

[18] Leland D. Baldwin, *Reframing the Constitution: An Imperative for Modern America* (Santa Barbara: ABC Clio Press, 1972); James L. Sundquist, "Needed: A Workable Check on the Presidency," *The Brookings Bulletin*, vol. 10, no. 4, 7-11.

[19] Rexford G. Tugwell, *A Model Constitution for a United Republics of America* (Santa Barbara: Center for the Study of Democratic Institutions, 1970); Charles M. Hardin, cited *supra*, n. 12.

In a very important sense, the institutionalization of accountability in America on the lines of a British model is hopeless. But in another sense, the institutionalization of accountability in the United States has already long been established, and indeed one can argue that it is more complete here than in the United Kingdom. The American constitutional and political system has always had as its central purpose the thwarting of tyranny and the prevention of the abuse of power. As I argued earlier, the fundamental principles of the American system—separation of powers, checks and balances, federalism, judicial review, limited government—are all addressed to this central concern. We curb executives by checking and fragmenting their power, not only on a formal constitutional basis, but by a series of informal and conventional mechanisms that have evolved empirically over the two hundred years of our national life. The decentralized parties, the pluralism of interest-group politics, the diversity of our electoral laws, the different political constituencies of President and Congress—all these operate to fragment the powers of both Executive and Legislature. We have been saying for years that the big difference between America and Britain is fragmentation versus fusion of power. It is very curious that we seem now to forget that fundamental distinction as we emerge from the catharsis of Watergate.

The truth is that the devices of responsible government are not designed to solve problems of the sort represented by Watergate, that is to say, of executive malfeasance, venality, or illegality.[21] They are designed to provide a means of reconciling political differences between Executive and Legislature—differences that the United States constitution is intended to encourage and protect. The British mechanisms are designed to curb—and expel—a Prime Minister or Cabinet no longer politically acceptable. It is conceivable that such mechanisms could be used against a leadership accused of venality or criminality, but they are not designed for that purpose. Indeed the intimate relation between Executive and Legislature in the parliamentary system—together with the informal and unreproducible mechanisms that I have already described—would surely make it impossible for executive corruption or criminality to reach the stage where the formal mechanisms of the confidence vote would be brought into play. They would be dealt with at a much earlier stage.

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[30] Frederick C. Mosher and others, *Watergate: Implications for Responsible Government* (New York: Basic Books, 1974), 18.

In the United States, the mechanisms by which we deal with a president no longer politically acceptable must operate within the framework of a fixed term, the separation of powers, and congressional intractability; because of his fundamental independence, it is almost a contradiction in terms (or at least an irrelevancy) to speak of a politically unacceptable president. The question posed by the Nixon experience was not how to curb a politically unacceptable president, but how to expel one charged with malfeasance of office. On that narrower basis, one can only conclude that the mechanisms in the present constitution were adequate. As Senator Scott said the day after the resignation, "The system worked." The same point is made in the title of a recent book by Jimmy Breslin, *How the Good Guys Finally Won.*[22] Or more succinctly by my colleague, Emmette Redford, "We got him didn't we?" What got him, of course, were the impeachment provisions of the constitution and the imminent threat of their use by House and Senate. It took impeachment to make the system work, but that was exactly the kind of behavior that impeachment was designed to remedy or punish. In short, impeachment worked the way the founding fathers intended it to work—a president should be impeached only for serious cause, the cause should not be precisely stated, and the process should be slow and cumbersome to prevent rash action by Congress.[23]

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[21] On the futility of solving problems of political ethics by tinkering with governmental structures, see some very wise remarks by Don K. Price, "Irresponsibility as an Article of Faith," in a symposium entitled *Ethics and Bigness*, ed. Harlan Cleveland and Harold D. Lasswell (New York: Harper, 1962), 435-436.

[22] New York: Viking Press, 1975.

It does not follow, of course, that all is well with the system and that no reforms are indicated. The chorus demanding reform, however, is more cacophony than harmony. A leading theme is that the presidency is too powerful and must be reduced. Mr. Sundquist says, "The presidency puts too much power in one man."[24] Harry MacPherson said recently in *The New York Times*,[25] "The first lesson of Watergate is clear enough: it could happen again." I have already argued that subjecting the President to a no-confidence vote would be both fatuous and fruitless.[26] The same argument can be made about a general reduction of presidential power. The recent crisis of the presidency was produced by Vietnam and by Watergate, neither of which is really attributable to defects in the institutions themselves; thus a change in the institutions will certainly not prevent their happening again. In the conditions of the 20th century, the presidency must be a strong and powerful office; that is both inescapable and essential; indeed it is more than essential—it is very important. If we demand great things of government, we must have great governments to respond to those demands.

Vietnam and Watergate have already prompted a series of reforms, most of them salutary and a few of them effective. The War Powers Act of 1973, the public funding of presidential campaigns, the limits imposed on campaign expenditures, congressional reforms of the budgeting process, and the Freedom of Information Act—all these are designed to place the President under a more searching scrutiny, so that his use or abuse of power can be seen more quickly and remedied more effectively. No doubt, other reforms will be advanced as well. Indeed, some thoughtful political scientists, including James MacGregor Burns,[27] have argued for an overarching reassessment of the entire American political system. It is quite probable that such a reassessment would prove illuminating and constructive, even if not ineluctibly ameliorative. I do not counsel smugness—I caution against precipitous irrelevancies. Let us beware of needless innovations—especially when guided by logic. One may hope that a sharp distinction will be maintained between reforms designed on the one hand the better to equip Congress and the public to observe and understand presidential activity, and reforms designed, on the other hand, to deprive the presidency of powers needed to conduct the nation's affairs. It may be worth a reminder that when Woodrow Wilson argued that the United States should adopt a parliamentary system, he was concerned to increase and concentrate the power of the Executive, not to find better ways of curbing it.

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[23] Erwin C. Hargrove and Roy Hoopes, *The Presidency: A Question of Power* (Boston: Little, Brown & Co., 1975), 52.

[24] James L. Sundquist, op. cit. supra, n. 18.

[25] *The New York Times*, August 25, 1974.

[26] To quote Don K. Price again: "It is odd . . . to find Americans who seek to increase legislative control over the executive arguing for the system that in Britain has given the executive control over the legislature." "The Parliamentary and Presidential Systems," *Public Administration Review*, Autumn, 1943, 319.

[27] In an address to the 1975 meeting of the Southern Political Science Association in Nashville, Tennessee.

In conclusion, I suggest that the best way of insuring that presidents will conduct themselves in accord with the law is to elect good men to the presidency—not to fetter them with impossible constitutional restraints, but to surround them with what Richard Neustadt calls the "informal constraints upon the President,"[28]—principally to be found in the presidential schedule, the presidential press conference, and the presidential staff system. I suggest that the more elaborate and extensive proposals to puncture a swollen presidency would not have prevented the crises of recent years. The devices that might have limited Mr. Nixon's ability to abuse his power would surely not have restricted his arrogant mendacity, and under the circumstances they might have impeded a better man in the proper use of that same power.

My abiding confidence in the system rests upon a belief that it is designed to suit the needs of a diverse and robustious American nation, and that it has worked well in the past—even in the recent past. My confidence rests also on the continued vigor and viability of an observant, aggressive press. It was, after all, the press that called attention to the problems of our time and the need for the nation to address them. Ultimately, the institutionalization of accountability in America either is unnecessary or has already long been accomplished. It lies in the insistent demands of an aroused public that public men shall conduct themselves not only in ethically proper ways, but in ways that are politically acceptable to the vast majority. It was an aroused public that brought about a sharp change in the Vietnam policy; it was an aroused public that led President Johnson to withdraw in 1968; it was an aroused public that forced President Nixon to resign in 1974. It is the aroused public, stimulated and supported by a vigilant press, that is the major palladium of democracy in America today.

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[28] Richard E. Neustadt, "The Constraining of the President," *The New York Times Magazine*, October 14, 1973, 38 ff.

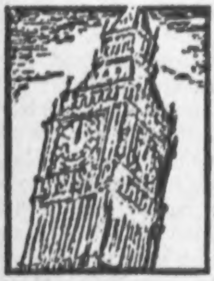
## IV. SOME STRENGTHS AND WEAKNESSES OF PARLIAMENTARY SYSTEMS

from Encounter, February 1978

### *Roy Jenkins*

# What's Wrong, & What Could Be Set Right

## *"Reflections after 29 years in Parliament"*



IT IS NOW almost twelve months since I left the House of Commons, having been a member for 29 years—nearly all my adult life.

I do not suggest that they were the most *eventful* three decades in British parliamentary history. A member elected to Charles I's first Parliament in 1625 who survived until Cromwell's musketeers chased out the Rump Parliament in 1653 would have seen far more dramatic changes than any seen between 1948 and 1977. For that matter, so would a member elected in the general election of 1812, who sat through the end of the Napoleonic Wars, the struggles about Catholic Emancipation in the 1820s, the passage of the Great Reform Act of 1832, and the alienation of the Peelites from the Conservative Party in the 1840s. But I do suggest that the last thirty years have been among the most *remarkable* in the history, not just of the British Parliament, but of British political institutions in general.

I want to take this opportunity, having been distanced from the day-to-day preoccupations of parliamentary life for the best part of a year, to examine some of the changes which took place in British government and politics during the period I was in the House of Commons and to consider some of the lessons which seem to me to emerge from such an examination.

ONE CHANGE stands out above all others. It is that, for some time now, our system of government has been a matter of considerable public controversy—occasionally between the parties on the floor of the House of Commons, more often within the parties, and more often still among those concerned generally with public affairs, but free of the constraints of party discipline and party interest—in a sense which was not remotely true when I entered the House of Commons in 1948.

In the 1930s, many people on the Left took it for granted that the social and economic changes which they believed to be necessary could not be made within the existing constitutional framework. Sir Stafford Cripps was only one of those who believed that an incoming Labour Government would be faced by organised sabotage on the part of high finance and big business, and that such sabotage could be overcome only by suspending the normal, time-consuming procedures of the House of Commons. Nothing of the sort happened. In striking contrast to the 1906 Liberal Government, which had to spend the best part of two years in a debilitating struggle over the veto power of the House of Lords, culminating in the 1911 Parliament Act, the 1945 Labour Government carried through a sweeping programme of social and economic change without making any significant constitutional changes, and without even provoking any serious constitutional arguments. There was plenty of political debate, even a good deal of political bitterness, but there was practically no constitutional dispute.

THE SITUATION TODAY could scarcely be more different.

The two most important proposals in the Queen's Speech for the current session are devolution for Scotland and Wales and direct elections for the European Parliament—both constitutional measures of the highest significance, which raise issues that go much wider than the proposals themselves. In the first of them the nature of the United Kingdom is considerably changed. In the second the House of Commons was invited to enact a form of proportional representation—something which is a great innovation for Great Britain, although none the worse for that. In addition, the constitutional status of Northern Ireland, which for more than a generation appeared to have been settled in 1922, has been in dispute since the late 1960s, and the dispute shows no sign of ending in the near future. There is also the question of the use of the referendum, certainly in relation to devolution and also now raised, as we knew would inevitably be the case, once the device had been first used, for other issues, both wide and narrow.

Outside the House of Commons, much more is in dispute. The need for a Bill of Rights—the question of fixed terms for Parliaments; the arguments for and against regional government, the desirability of a form of primary election to determine the choice of parliamentary candidates, the advantages and disadvantages of proportional representation in general and of particular forms of proportional representation in particular, the relationship between civil servants and ministers, the question of official secrecy, even the relationship between Parliament and the courts—all of these are now seriously debated, in academic circles, in the publications of P.E.P. and similar bodies, by High Court judges and in the columns of the serious press, in a way which has had no parallel in my political lifetime.

DEEPER AND LESS TANGIBLE symptoms of public dissatisfaction with our political institutions can be detected as well.

One of the most striking is the fall in the turnout of voters in general elections—from 83% in 1951 to 73% in October 1974. Another is the fall in the percentage of the popular vote won by the two main parties put together. In 1951, 80% of those eligible to vote—and 97% of those who actually voted—voted for either the Labour or Conservative party. In October 1974, the figures were 55% and 75%.

A quite different symptom, apparently unrelated but springing, I believe, from the same root cause, is the remarkable growth of non- or extra-*party* forms of political action. It was one of the reasons why the referendum campaign both aroused the enthusiastic participation of many who had been repelled by conventional political activity, and produced a spontaneously high turn-out which showed what a combination of the ineffective and the unnecessary is a great deal of the traditional paraphernalia of modern electioneering. And that has not been a solitary phenomenon. Political idealism of a kind which would have been expressed within the party system in the 1930s and '40s is now at least as likely to find expression outside it, in organisations like Christian Aid or Oxfam or the Child Poverty Action Group. Aggrieved citizens who might once have been content to complain to their Member of Parliament or local councillor now form protest movements of varying degrees of stridency—to stop the building of a motorway; to insist on the provision of a bus shelter; to demand better shopping facilities in their neighbourhood or, negatively, to ensure that a probation hostel is located in someone else's neighbourhood and not their own. And in the background, unmeasurable but unmistakable, is a growing wave of grumbling—sometimes high-pitched and excitable, more often melancholy and resigned—at the remoteness of government and the inflexibility of officialdom, national and local.

The extent of this dissatisfaction should not be exaggerated. By world standards, Britain's political institutions are still remarkably stable and deeply-rooted. But I do not think it can be denied that they enjoy less public support than they did a generation ago. In the late 1940s, the "Westminster model" of parliamentary government, the "Whitehall model" of public administration and the conventions associated with both seemed, to most people in this country, to represent very nearly the acme of human achievement in matters of government. Today, both models inspire more scepticism and less enthusiasm than at any time since the Reform movement of the early 19th century.

Two questions therefore have to be answered. Why has this change of mood taken place? Is it justified?

TO SOME EXTENT, OF COURSE, the situation I have been trying to describe is merely a local British version of a phenomenon which is common to the whole of the Western industrialised world.

Separatism is a problem in Quebec as well as in Scotland; demands for regional autonomy are heard all over Western Europe; electoral volatility has been somewhat on the increase from Israel to Sweden. But few other countries have seen the violent swings in party support—as measured either by public opinion polls or local elections, whether for Parliament or local bodies—which Britain has experienced over the past few years. It is in Denmark, not in Britain, that Mr Mogens Glistrup's anti-tax party has become the second largest in Parliament. In the Netherlands politicians were unable to form a government for seven months. Protest movements, often much more strident than any we have experienced, are at least as frequent on the other side of the Channel or for that matter on the other side of the Atlantic as on this. In Western Europe, indeed, democracy is far more *widely* established than it was forty years ago, in Germany, in Italy, in Spain, in Portugal. But on the other hand the art of democratic politics has undoubtedly become more difficult and the demands of democratic electorates harder to accommodate than they were twenty years ago.

This widespread phenomenon is the product, I believe, of a complex mixture of forces, none of which is confined to Britain and most of which are, in themselves, signs of health rather than of sickness. Improved educational standards have led, inevitably and properly, to a more questioning attitude to authority—not only in politics but in other spheres as well. Rising living standards have produced an even more rapid rise in expectations; and although these expectations are often hard to satisfy, the fact that they exist is a sign of widening and not narrowing economic and political horizons. Rapid technological change and the growth in social and geographical mobility associated with it have disrupted old communities and old ways of living. But although the pace of change has sometimes been psychologically disturbing, sometimes encouraging demands to put back the social or political clock, few would exchange the increased prosperity and wider chance of personal freedom which modern technology has made possible for the deprivation and oppression of the past.

IT IS TRUE THAT one result of all these changes has been to increase the demands made upon governments, often to a point which is beyond any government's capacity to meet them. But even this is a paradoxical tribute to the social inventiveness of the recent past. Few demands were made of government in the days when government was manifestly impotent in the face of the closed horizons and deadening squalor which were the lot of most ordinary citizens. It is because modern governments have been able to promote greater prosperity and ensure a more equitable distribution of its results that the demands made of government have grown—and that, as a result, governments (and, still more, would-be governments) have been under increasing pressure to promise more than they could perform. All too often they have succumbed to the pressure. Understandably, the resultant gap between promise and performance has given rise to a mood of disillusionment among those whose expectations have been disappointed. But the gap would not have come into being in the first place if the expectations had been totally without foundation.

I therefore reject the view that democracy itself has failed and the associated view that the solution to our problems lies in trying to roll far back the frontiers of the state, and returning to the more passive view of government which prevailed fifty or a hundred years ago. Self-government is a difficult, and even perilous undertaking: it always has been. In some ways, it is more difficult now than it used to be. But the fact that these difficulties exist is not an argument for running away from them. It is an argument for sharpening our critical analysis, but not for sinking into destructive pessimism.

ALL THIS APPLIES as much to Britain as to the rest of the western world. Yet in certain respects the situation in this country has no parallel elsewhere.

The British are not alone in criticising their political institutions. They are alone, at any rate among the major Western democracies, in the extent to which the volume, frequency and depth of their criticisms have increased over the last thirty years. And this state of affairs deserves more investigation than those engaged in the day-to-day party struggle are willing, or perhaps able, to give it.

It has two obvious causes. The first is that over the 30-year period which I have been discussing, Britain has suffered a uniquely rapid, steep and emotionally disturbing loss of power, relatively and absolutely. It is true, of course, that Britain's decline as a world power began long before the beginning of that period—at the latest in the aftermath of the First World War, and arguably as long ago as the end of the 19th century. But her decline was masked by her victory in the Second World War, which seemed, to most of her citizens, to vindicate, not just democracy in general, but Britain's special form of democracy in particular. The "Westminster model", indeed in a literal sense the Westminster citadel, had been tested under fire, and had survived the test. That mood lasted until the early 1950s, fortified first and more significantly by the achievement of the post-War Labour Government in establishing a welfare state which seemed to provide a model for less fortunate peoples to copy, and then by the achievement of its Conservative successor in softening its austerities without attacking its essential basis. At some point in the mid-1950s, however, there began a painful twenty years of increasingly obvious decline; and it would have been surprising if this had not unleashed a mood of questioning and self-doubt.

During those twenty years, moreover, successive British governments failed to compensate for the loss of political power with economic success. Government after government proclaimed that, unlike its predecessors, it knew the secret of economic growth: that now, at last, Britain's economic performance would start to catch up with those of her neighbours and competitors: that the problems of low productivity and declining competitiveness which had been a feature of British industry since the late-19th century were at last on the point of being overcome. Depressingly but not altogether surprisingly, government after government failed to do anything of the kind. It is conceivable that if we had not tried so energetically to increase the rate of growth in the short run, we might have done more to increase our capacity to grow more rapidly in the longer run. Perhaps if the promises had been less alluring, the performance would have been less disappointing. In any event the *widening* gap between promise and performance—the contrast between the increasingly strident nature of the promises and the increasingly meagre character of the results—has fortified the mood of institutional self-doubt which the retreat from Empire would almost certainly have caused in any event.

THIS BRINGS ME to my second question: is the change of mood which I have been trying to describe justified?

It is not wholly so. There are considerable strengths in the British system. To some extent they are more apparent to me now than they were when I left the House of Commons a year ago. It was a singularly dismal period in British politics. Partisanship seemed more important than national recovery. Controversial and unwanted measures were forced through a reluctant Parliament. Other governments viewed from Westminster seemed less politically motivated, more courageous, and certainly more effective: almost comparative paragons of political virtue. Now, seen from the outside, I take a somewhat more balanced view. British government has become calmer, firmer and more relevant. And other governments, seen at closer quarters, seem more vulnerable to the political pressures and consequent weaknesses to which almost all "human flesh is heir."

At a different level, it is important to remember that the relative decline in British power was inevitable, and—to the extent that it was due to a loss of Empire—actually desirable. The military and diplomatic role which Britain played in the late 1940s was unsustainable, and the importance it appeared to give her in world affairs was to a large extent artificial. It owed less to her intrinsic strength than to the devastation which the war had brought to continental Europe, and it was bound, sooner or later, to be eroded. It is at least arguable, moreover, that Britain managed her relative decline more gracefully and less disturbingly than could reasonably have been expected, and that part of the credit should go to the political institutions and conventions which made it possible for her leaders to do this.

Yet, when all possible qualifications have been made, there can be no doubt that the British political system has failed adequately to promote the long-term interests of the British people—not merely over the last 20 years, but over a much longer period. In my view there can also be no doubt that that failure has been due, not merely to obdurate circumstance, but to some features of our system of government and politics and to the assumptions and conventions which underpin it.

DESPITE OUR NATIONAL PRIDE in our practicality and adaptability, and a common assumption among some foreign observers that we will always be skilled enough to "muddle through", one of the features of British history for the last 70 years and more is the incapacity of British social, economic, and political institutions to adapt to the need for domestic change. Of course, ours is not the only society of which this could be said. Some societies—France under the Third Republic, post-Risorgimento Italy, pre-Revolutionary Russia, the Austro-Hungarian

Empire—have been much less adaptable than ours. But the list hardly provides ground for comfort.

Compared with post-War Germany, post-War Japan, the United States for virtually the whole of its history—compared for that matter with early-Victorian Britain—modern Britain has been sluggish, uninventive, and unadaptable, not merely economically but socially and politically as well. It is true, of course, that this state of affairs has been due, in part, to social and cultural factors which may at first sight appear to have little to do with politics and government. But our political assumptions and institutions reflect these social and cultural factors, and in turn reinforce them.

I do not believe that we can make our way in the rough world of the late twentieth century unless we can make our society more adaptable, and I do not believe that we can make our society more adaptable unless we can change the political habits which at present hinder adaptation.

THREE FEATURES of our political life seem to me particularly unfortunate from this point of view.

The first is that we have developed an unsatisfactory set of relationships between Central and Local government, Parliament, and the Courts—as a result of which British Governments have both too much and too little power. In theory, Parliament is sovereign. As old-fashioned exponents of its virtue never tire of reminding us, it can do anything it likes except perhaps change the climate. But in reality, of course, Parliament is sovereign only in a highly technical sense which has little in common with the normal connotation of the word. Its capacity to scrutinise and control the civil service, and to influence policy at the formative stage, is inadequate—smaller, I think, than the European Parliament's capacity to influence the policy of the European Commission. In normal circumstances, when the government of the day has a secure majority, its capacity even to alter the details of legislation is not much greater.

What parliamentary sovereignty really means is party sovereignty: and a party that wins a bare majority of seats in the House of Commons enjoys the full fruits of sovereignty, even if it has won the votes of well under half the electorate. So long as its members obey the whip, such a party can force through whatever legislation it wishes, even on matters which in most other democracies would require an amendment to the constitution. Although the courts have begun to show more willingness to challenge the executive than they used to do, their ability to resist a determined government with a parliamentary majority at its back is severely limited. But in spite of (or perhaps because of) the vast apparatus of power at the command of the sovereign party, the great bureaucracies of Whitehall are unadventurous, inflexible and ill-adapted to the task of managing a society with little but its wits to live on, while the lesser but more inflated bureaucracies of local government are still more so.

The net result is that British Governments find it all too easy to carry through harmful changes, and extraordinarily difficult to carry through beneficial ones. They can take an industry in and out of public ownership at the drop of a hat. Raising Britain's industrial productivity to the level of her competitors has proved beyond them.

ALL THIS IS BUTTRESSED by far from satisfactory relationships between governments and the great producer groups—organised labour on the one hand, and the organised employers on the other. All advanced Western democracies have had to develop forms of consultation between the Trade Unions, the Employers, and the State; the fact that Britain has done so too should occasion no surprise, still less dismay. But although there is nothing wrong with the fact of such tripartism, there is a great deal wrong with the form which it has taken in this country.

Almost by definition, the great producer groups are highly conservative. They derive their power from their weight in the economy as it is, and they therefore have a natural tendency to want the economy to stay as it is. They want prosperity and growth, of course; but they do not want the disturbance without which growth is impossible.

The Trade Unions are all for higher investment; they are less enthusiastic about reducing the manning levels which make new investment unprofitable. Business leaders are all for the free play of the market: that does not prevent them from scurrying to the government for help when market forces threaten them with bankruptcy.

A society in need of innovation therefore needs an open form of tripartism, so that the public interest can be brought to bear on the bargaining between the producer groups and the State before the deals are made. What we have in fact is secrecy, punctuated by leaks—a state of affairs which enables each party to the bargain to shuffle off its responsibility on to the others, and ensures that the general public, which has no way of arriving at the truth, becomes more cynical about the system than it was before.

LAST, BUT BY NO MEANS LEAST, among the features of our political life which most seriously inhibit innovation and adaptability is a rigid, and at the same time unusually backward-looking party system. This undoubtedly exacerbates some of the deficiencies I have described: the weakness, at any rate when there is a clear-cut majority, of the House of Commons in the face of the Executive, the weakness of the general public in the face of the producer groups, the weakness of reforming officials and ministers in the face of bureaucratic inertia.

How should we look for structural political improvement?

FIRST, WE MUST SEEK a more flexible party system. I have been a party politician for all my adult life, and I still believe that a properly functioning party system provides the best form of government for a society like ours. But the main parties must be at once more modest and more tolerant. They must recognise that they are far from being the repositories of all wisdom. Neither is always right and neither is always wrong—although sometimes they are both wrong! They must also recognise a sustained duty, in good electoral times as well as in bad, to represent the outlook and aspirations of the broad segment of the nation from whom they get support, and not merely that of party zealots—and they must also respect the views of those who do not support them. They must allow greater independence of view and vote to individual Members of Parliament within their own ranks. Nor should they seek to snuff out minority parties in Parliament; an electoral system, however hallowed, certainly should not be defended on the grounds that it comes near to doing that. I think that the public, suspicious of political oligarchies, rather likes a more plural Parliament.

There is also a further problem. Many voters today would distinguish sharply between their willingness to vote for a moderate Labour Government and one which might become extremist, or indeed between a moderate and a doctrinaire Conservative Government. The ballot box provides no means of enabling them to express positively such important preferences. Indeed paradoxically by helping to pile up an unrestrained majority for either they may produce exactly the result that they do not want. At a time when so many other constitutional issues, from the future shape of the United Kingdom to a unicameral legislature are at issue, I do not believe that we can possibly regard our traditional electoral system as a subject which is taboo. We need primaries, or some form of proportional representation, or both.

SECOND, WE NEED (independently of changes of government) more continuity and consistency of policy. Only thus have we a chance of escaping from the economic failures of the past. A good test of whether a major piece of legislation is worth passing is whether it has a reasonable chance of not being repealed by the next government of a different political persuasion. This is not a recipe for inertia or even for lack of political controversy. Some of the most bitterly contested measures of the last hundred years—from the electoral reform bills and major social advance to the setting up of commercial television, to take an example from the Right—have been inviolate once on the Statute Book, for the very good reason that they were sufficiently relevant and popular that they quickly became part of the social fabric, and could only have been undone at the cost of considerable electoral damage to the opposing party. But measures which are the shuttlecocks of party politics, and often do a lot of damage to industry and society in the course of the game, serve little purpose other than that of discrediting the legislature.

THIRD, WE NEED to reconcile the demands for more local autonomy with the fact, only superficially contradictory, that international interdependence has already snatched some major issues away from any possibility of effective control even by national governments and, therefore, from national parliaments.

This has nothing to do with theoretical defences of the sovereignty of Westminster. It is concerned with (on the one hand) the extent to which the power of decision on trading climate or monetary questions, for example, has already fled from these shores, whether to Washington, Brussels, or even Tokyo; and (on the other) the local revolt against remoteness in the administration of local matters. With good sense and calm judgment both can, in my view, be handled as well as we handled the retreat from Empire and far better than we handled, say the Irish question in the late 19th and early 20th centuries. The Westminster Parliament is notoriously overworked. It should not be too worried about a little concentration of its energies. But there are two provisos.

First, we simply cannot afford more layers of government, or multiplications of bureaucracy. I say that as someone who, contrary to a widespread view, presides over one of the smallest in the world for its task. The Brussels Commission staff is smaller than that of the Wandsworth Borough Council in London. When a new layer is put in, an existing one should be taken out.

Second, as we introduce new and complicated frontiers of competence, I do not think we can or should avoid some measure of judicial review. Most countries get along with it very well. It may need a greater degree of political and social awareness than is at present the British judicial tradition.

YET IT WOULD BE WRONG to end on too pessimistic a note. There are undoubtedly neglected ailments in British politics, but there is no reason to fear that the illness is terminal. The ferment of institutional argument and self-questioning, to which I referred at the beginning, may even, I believe, be a sign that we are beginning to recover. It is true, that at present, the questions are being asked more loudly and insistently outside Westminster than inside. It is also true that many party politicians—though not the outside public—are still reluctant to admit that the party system is itself a considerable cause of the other institutional ills from which we suffer, and that it is faintly ludicrous to hope to put society to rights while preserving as the one sacrosanct element every aspect of our now somewhat ossified political system. Hardly the most inspiring or convincing message for the future, if I may paraphrase slightly, would be:

> *Let wealth and commerce, laws and learning die,*
> *But leave us still our old polity*

But I am not convinced that this need be the stark choice. I have always believed in reform rather than revolution. That is wholly applicable to the political position today.

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# THE FIRST HANSARD SOCIETY LECTURE*

## THE CHANGING FACE OF PARLIAMENTARY DEMOCRACY

*By The Rt. Hon. George Thomas*
*Speaker of the House of Commons*

I AM intrigued to know that the Hansard Society's next annual conference is to discuss the question "Is Parliament Failing the Nation?" The very fact that such a question could be posed should be enough to cause alarm bells to clang loudly in the ears of parliamentarians. At the very end of this discussion, I shall turn my own attention to that question, but firstly I want to indicate the major changes that we have introduced into the functioning of Parliament in an effort to meet the changing needs of this generation.

Parliament, and in particular the elected House of Commons, though the Upper House has its part to play, is the custodian of our liberties. It remains essentially true in 1982, as it has been for centuries, that the guardian of our liberties and our rights is the High Court of Parliament itself. The post-war years in Britain have witnessed very significant changes in the political, economic and social framework of our country. Take one example, our membership since 1973 of the European Community has meant that we have had to adapt our work in order to keep in step with that development. It is adaptability to change and progress which has done so much to ensure the continuity of Parliament. The continuity of our Parliament has lent stability to our country. My own office is over 600 years old and through the centuries the House has invested the Speakership with considerable authority. For the past two centuries the Speaker has been expected to be out of the party battle and to be completely impartial. The exercise of the Speaker's authority is possible only when the House has the feeling that he is fair as between one side and the other.

If I were asked to identify the most far reaching development in parliamentary life since the war, I could with justification point to the very substantial increase in Parliament's responsibilities and workload, and it is in the context of that increase that we have decided upon changes in the Select Committee system of the House of Commons. The Commons has been growing increasingly restive about the inability of Parliament to control the executive, that is, the government of the day. Due to the growth in volume and complexity of government action, the development of the party system and the necessity to get legislation passed, power has imperceptibly but inevitably been transferred from the Commons to the government. Thus the House of Commons from time to time has been obliged to vote enormous sums of money for public expenditure without being satisfied that it had adequately debated the sums required. Recent major changes in our Select Committee system have been undertaken in order to restore the influence of individual members, and therefore of the Commons itself, by enabling members to exercise effectively their traditional rights and functions in the questioning of ministers and, equally important, of our bureaucracy. Through these dynamic Select Committees we seek to ensure that both Parliament and the government are responsive to the wishes of the electorate. The fact that Select Committees are able to cross-examine in searching fashion both ministers and their advisers and the chairmen of nationalised industries has brought new tracts of public sector to be accountable to the House of Commons.

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*This lecture was delivered at the National Museum of Wales, Cardiff, on 14 May, before an audience drawn mainly from sixth formers.

We set up a procedure committee in 1977/78 and it recommended the setting up of twelve new committees to cover the activities of all departments of government and all nationalised industries and Quangos within the responsibility of the departments concerned. The Leader of the House at the time was Mr Norman St. John-Stevas, who in my judgment will rank as one of the greatest parliamentary reformers in this century because he fought to bring power back to the Commons through these Select Committees. When he was moving the Resolution in the House to set them up, he said that he saw them as enabling Parliament to fulfil its function—not to govern, that is for the government, but to subject the executive to limitations and controls to protect the liberties of the individual citizen, to defend him against the arbitrary use of power by people in authority, to focus the mind of the nation on the great issues of the day by the maintenance of continuous dialogue and discussion and, by remaining at the centre of the stage, to impose parliamentary conventions or manners on the whole political system.

The setting up of the Select Committees has proved to be a giant step forward in bringing back to the Commons a power and authority that it had lost. If I were a minister still—I once had that privilege—or a chief civil servant, I know that I would not be very fond of them, because inevitably they lead to an increase of work in the departments and it means that departments have to be able to defend decisions which they have taken. These reforms were rightly hailed in the debate that initiated them as a step that would alter the relations between the executive and the House of Commons and would go a fair way towards redressing the balance of power.

It is still early days of course, but on the whole reaction to the work of the Select Committees has been favourable. It is significant that most of their sittings are held in public and that they can travel from place to place to take evidence, all of which can be seen to be adding to the impact and the immediacy of their proceedings. An excellent illustration is the fact that when the riots took place in Bristol in April of 1980, the Race Relations Sub-Committee of the Home Office Committee was able to go to Bristol the very next month to make its enquiries. In addition, there are certain other spin-off results: most importantly, perhaps, the sheer volume of evidence collected, both oral and written on all sorts of subjects from ministers, civil servants and involved parties in general. Quite apart from the reassurance offered by the idea of the executive being questioned in public by elected representatives of the people, it is also indisputable that the evidence of the Select Committees will provide valuable historical records for posterity. As they grow in influence, the chairmanship of these Committees will also take on new significance. In the House of Commons there have always been very distinguished members who have no desire to become ministers, but who will enjoy the power and the responsibility of the chairmanship of Select Committees.

The civil service itself had to decide how it would respond to the setting up of the Select Committees and the Memorandum of Guidance for government officials produced by the former Civil Service Department required departments to do their best to reply to the reports of Select Committees within two months and to give reasons for not doing so before two months have lapsed if a considered reply is not possible. Edward Du Cann, the chairman of the Liaison Committee which consists of every chairman of every Select Committee, summed up the achievements of the new system in a recent article by saying that apart from simply opening the system up, in a little more than a year's work the Select Committees have produced more than fifty reports. The quality overall has been high. A few have had substantial results. For example, the report from the Foreign Affairs Committee on the Canadian constitution has become a textbook on that subject. The Home Affairs Committee report on the so-called "sus" law—the right of the police to stop and search—led to immediate reform. The Treasury Committee's report on public expenditure had illuminated the debates in the House of Commons on that subject and its criticisms about public sector pay settlements were accepted by the government. Its study of monetary policies is a notable reference work.

It could also be said that Members of Parliament are contributing more significantly to the solution of the problems of our generation by the committee work that they do in the House. People in the gallery may often notice how few members there are at a given moment on the floor of the chamber, but the House is teeming with committees and we trust that that is where the Members are. These committees are able to probe such questions as the sale of council houses, monetarism, racial disadvantage and the funding of the arts, rather than leaving such investigations as we have in the past to Royal Commissions or to ad hoc outside bodies with no continuity. Our Procedure Committee recommended in 1977/78 that the House of Commons should no longer rest content with an incomplete and unsystematic scrutiny of the activities of the executive merely as a result of historical accident or sporadic pressures, and it is equally desirable for the different branches of the public service to be subject to an even and regular incidence of Select Committee investigation into their activities. Our generation has seen a monumental increase in investigative journalism; the Commons has more than matched this by an increase in investigative Select Committees. Of course, these committees add to the work of government departments—they must be the bane of their life—but they help to give new power to the elected representatives of the people.

I want to look now at the broadcasting of our parliamentary proceedings which has been another substantial means of us acquainting the people of Britain with the activities of Parliament. Many will have noticed the noise factor. It has always been present in Parliament, but it came as a shock to the public, which heard for the first time the baying of angry voices. However, all of us with long experience in the Commons are aware that with the exception, and it is an exception, of Prime Minister's Question Time, our proceedings are much quieter than once they were. I am convinced that the broadcasting of our parliamentary proceedings has been justified by results. Although I acknowledge it has not done much to enhance the dignity of our proceedings themselves, the public are much more aware of what is being said in their name in Parliament and they are also more aware of how it is being said.

Every day our public galleries in the Commons are crowded with people who want to see as well as to hear the proceedings, and this leads me to the fact that the televising of Parliament is a very lively issue in the minds of many Members. I do not anticipate that it will come about in the life of this Parliament, but television is such a powerful part of the media that I have no doubt at all that the clamour for televising our proceedings will continue. Television has become a natural part of our everyday life. As Speaker I am precluded from giving my opinion, but I can get very close to it for I can indicate what I know is in the mind of my colleagues. I believe that this issue will not go away.

There is no doubt that both the BBC and the independent companies have gained much experience in using recorded material, thus ensuring that the nightly news bulletins on radio and on television are much more exciting because the actual voice of the Members addressing the House is heard. Quotations from the speeches of the Prime Minister, the Leader of the Opposition and others adds to the liveliness of the news bulletins and it certainly is an additional way in which Parliament is able to speak to the people. Our recent debates on the Falkland Islands crisis have had an enormous audience throughout the land. There are millions of our fellow citizens who are better informed on that crisis because our proceedings have been broadcast than they would otherwise have been, while the knowledge that our proceedings have been broadcast has a substantial effect in the Commons itself. Every Member who is called to address the House is aware that he is speaking not only to his parliamentary colleagues but that his voice may ring in every home in the land.

There are other ways in which the House of Commons has taken positive steps to expand and to improve our communications with the general public. We seek to provide more information about our organisation and business. We have established a separate Public Information Office which is quite a recent development but is already handling over 50,000 enquiries a year, mainly by telephone concerning the business of the House, the stage that a Public Bill has reached, whether a particular Select Committee has made its report and other such issues. We have appointed a Parliamentary Education Officer who is in touch with schools throughout the country. It is thus clear that so far as we are concerned there is a conscious effort to reach out to the community and to ensure that there is nothing secret about our proceedings.

In my view all the changes that I have enumerated are proof of the vitality of our parliamentary institutions. They are also solid evidence of the underlying stability of our system of government. Never in the long and proud history of the British people has there been a time when the public has been better informed about what is happening at Westminster and what changes are taking place in the form of our parliamentary democracy. There have been odd times when the public has been more interested in Parliament, but not many occasions. The lead up to the Reform Bill of 1832 was a period when the whole country vibrated with concern about decisions at Westminster. The period of the General Strike was another time when the House hung with bated breath upon the decisions taken in Parliament. In the everyday life of our people, however, I think I can claim that our nation has rarely been more interested in the proceedings of Parliament than it is today.

It is true that there is less oratory in the Commons than was the case a few decades ago. There are not fewer orators, of course, for every day there are far more Members who are anxious to speak than was hitherto the case and almost every day when the Commons is sitting the tension that faces me is the fact that far more of them want to catch my eye than can possibly do so. Even after the numerous debates on the Falkland Islands crisis, there are still a fair number of members of the House who have sat through every one of those debates from beginning to the end, jumping up every time another Member sat down, hoping to be called, and they have not all been able to be called. So time is the enemy of oratory in the House of Commons because Members do their best to ensure that their speeches are not too long to allow other people to participate. Oratory, on the other hand, as any Welsh person could tell you requires time. We have only to go to Chapel to learn that.

I now turn to the question which the Hansard Society will discuss at its next conference. Is Parliament Failing the Nation? I ask myself, what does the nation expect of Parliament? If you were elected to the House, what do you think would be expected of you?

In many ways the House of Commons is a mirror of the nation. Every school of thought in these Islands is represented in the House of Commons and one of my most significant duties as Speaker is to guard minority rights, especially when they are unpopular views, and to ensure that even the most unpopular viewpoint is heard fairly. Our Members of Parliament are sturdy, independent people. They would not be in politics if they were not. It's no place for weaklings. No one who has stood as a candidate at the general election, knowing what it's like being dragged through a hedge, can fail to develop qualities that are indicative of strength of character. I believe in the doctrine of Edmund Burke that Members of Parliament are not delegates of a caucus; they are representatives of constituencies. They are not answerable to a handful; they are answerable to all the people whom they represent. I believe that our parliamentary democracy would suffer grievous change if members were simply mandated delegates on every issue which comes before the House. Through past centuries in our history the Speaker of the House of Commons has had the responsibility of guarding the rights of that House and therefore the rights of the British people. For if Westminster be undermined, Britain is undermined. If real democracy is challenged in that place, then it is challenged throughout the land.

I would be unworthy of my predecessors if I did not say to the nation at this time that I believe that our parliamentary democracy will be safe only as long as Members of Parliament are, within the chamber of the Commons responsible above all to their own consciences. The party system which has developed through the past century means that Members are elected on party tickets and undertake to give their loyalty to their party on whose programme the electors sent them to Westminster. Ever since I entered Parliament, however, and I believe long before, it has been understood by each party that when a Member felt that his conscience put him out of step with the decisions being taken by the party his integrity is acknowledged and his position understood. Mandated delegates in Westminster would change the historic parliamentary democracy which we have enjoyed and for which our fathers died. Many went to prison, many suffered that we could have the sort of democracy that we enjoy today.

Our parliamentary democracy with Members of Parliament answerable to their constituents is the envy of the world. To bring such a system to an end would mean the liberties that our fathers guarded so jealously would be put in danger. There is abundant evidence that in our society at large today there are people who do not believe in our parliamentary democracy. They are like weevils in the woodwork: if ignored they can cause enormous damage to things that we value most of all. These are the people who do not believe in free speech which is the essence of our parliamentary system. These are the people, and there are plenty of reports of them in the media each day, both at meetings and sometimes even at colleges, who will seek to shout down those presenting a point of view that is unacceptable to them. They claim liberties for themselves, but they seek to exploit our traditional toleration of minority views and are ruthless in their search for power. I am firmly convinced that our parliamentary democracy will be safe only if we are aware of the danger posed by the authoritarians in our midst. They are people who use the language of democracy in order to destroy democracy. The greatest heritage we have is the heritage of a parliamentary democracy with freedom of speech, freedom of worship, freedom of movement, independence of spirit. The price of our liberty is still eternal vigilance.

I can in all honesty say that although from time to time it might appear in the Commons that there is a refusal to allow a point of view to be advanced, everyone does in the end get a hearing. I would be ashamed to be Speaker if I did not feel that I could guarantee a hearing for any Member whose point of view might be upsetting the other side of the House. With all our human frailty in Westminster, we are still the country's ultimate bastion for freedom and if anything undermines the authority of the elected House of Commons, then our parliamentary democracy is indeed in peril. It is my turn now to carry the responsibilities of that great and honourable Office of State called the Speaker. I hope and pray that when the day comes for me to hand on the torch to another Speaker I shall be able to say to him, or to her, that the toleration and mutual respect which has strengthened Parliament in years past is still its characteristic.

I hope that I shall be able to say that love of real liberty flows through the veins of our people to whatever political party they may belong. Our parliamentary democracy has a pattern that consists of many different strands. It is not easily defined because it was not something carefully planned but rather the product of centuries of evolution. Our fathers, to whom we are all in debt, made this country great because they had a strong belief in the right of every individual citizen, never mind what his title, never mind what his resources. They believed that there are no unimportant people and on that Christian interpretation of the value of the individual we have built our parliamentary democracy as we know it today. I believe that as long as we have a faith like this that keeps a careful and critical eye upon our parliamentary institutions we shall be safe. I believe in my heart that our democracy will be protected because democracy is in the blood of people nurtured in these Islands. The basic values of our society decide the quality of our Parliament and not vice versa. Parliament has enormous influence, but Parliament reflects the nation, it does not create the nation. It is the values that we hold that decide our conduct, what we believe makes us what we are, and I hope and pray that in the years yet to be unfolded that the British people will continue to have faith in respecting the rights of their neighbours, respecting the law and thus respecting Parliament.

In this parliamentary democracy we believe in equality before the law, indeed this is one of the foundations on which our society is built. It follows from this that no one, even in pursuit of what he considers to be his own right, has any authority to believe himself entitled to break the law. We all have the right to demonstrate to change the law, that is our essential heritage of freedom, but as long as it is the law, it must be honoured. Equally it is true that no one and no organisation must ever be able to feel that they can brush Parliament aside, as though its decisions are less important than they themselves. Of course we are in a changing world, and because Parliament is a living organism it also changes. Everything that lives changes. If we are to remain a democracy, however, the High Court of Parliament, Lords and Commons together, must always be acknowledged as the highest Court in the land and it alone must be entrusted with the power to control the executive and to speak for our nation as a whole.

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# The Changing Face of the British House of Commons in the 1970s

**Until 1970, one party normally had a governing majority in the House of Commons, high voting cohesion existed in both major parliamentary parties, and Governments were rarely defeated in the House. In the decade of the 1970s, governing majorities declined in size and then disappeared, intra-party dissent rose markedly, and Government defeats in the division lobbies occurred frequently. These changes called into question the previously held assumptions that party discipline in the House of Commons resulted from the MPs' fears of precipitating a general election, from the power of the whips, from the expectation of party loyalty among the constituency parties, and from the Government's superior sources of information on matters of policy. A new self-reliance among MPs is likely to sustain and reinforce the movement for parliamentary reform.**

The period from 1945 to 1970 was one in which a number of generalizations could be and were made about collective behaviour in the British House of Commons. These generalizations, widely known and taught, stated that Governments tended to have an overall majority, that parties were cohesive in the division lobbies, and that Governments could not be defeated. Various hypotheses were used to explain these behavioural patterns. The decade of the 1970s witnessed significant changes in parliamentary behavior, with the generalizations applicable to the pre-1970 period no longer being of use. The purpose of this paper is to consider briefly the generalizations applicable to the 1945-1970 Parliaments, detail the changes of the 1970s, and consider their implications for the variables posited as being responsible for the behaviour of pre-1970 Parliaments. The behaviour of the pre-1970 period was also a contributory factor to pressure for parliamentary reform, and the author's tentative analysis of the implications of the changed behaviour of the 1970s for the reform movement will be advanced by way of conclusion.

The developments of the 1970s are significant in themselves, and they and their wider implications important for an understanding of the contemporary House of Commons. This paper does not attempt to explore in depth any one of these developments, but seeks rather to provide an overview of and comment upon them. In short, it seeks to provide a sketch, and no more than that, of the changing face of the House of Commons in the 1970s.

### Parliamentary Behaviour 1945-1970

Until 1970, students of British politics could make three generalizations about the postwar House of Commons, generalizations that were central to an understanding of parliamentary behaviour. All three–majority government, party cohesion, and rarity of Government defeats–were well known, though each was not as well documented as it might be. They may be identified briefly as follows.

One party was normally returned to the House of Commons with an overall majority (Table 1). On two occasions the Government majorities were small (five in 1950 and four in 1964, the latter reduced to one at the time of dissolution), but they were nevertheless sufficient to enable the Government on each occasion to survive for more than one session. Of the remaining elections, four resulted in Governments being returned with two figure overall majorities and two in Governments with three figure majorities. The last occasion on which a Government had been formed without an overall majority, moreover, was in 1929.

A very high degree of cohesion was a feature of both Labour and Conservative parliamentary parties, especially so in the division lobbies of the

TABLE 1
Parliamentary Majorities, 1945-1970

| Parliament | Party Returned to Office | Overall Majority[a] |
|---|---|---|
| 1945-1950 | Labour | 146 |
| 1950-1951 | Labour | 5 |
| 1951-1955 | Conservative | 17 |
| 1955-1959 | Conservative | 60 |
| 1959-1964 | Conservative | 100 |
| 1964-1966 | Labour | 4 |
| 1966-1970 | Labour | 98 |
| 1970-1974 | Conservative | 30 |

[a] Overall majority following the General Election. The Speaker is included in the party of which he was previously a member in Tables 1 and 2.

House. "Division lists," as Samuel Patterson (1973, p. 373) observed, "normally reflect(ed) complete intra-party solidarity." With the exception of the 1959-1964 Parliament, the number of divisions in which one or more Members of either main party cast dissenting votes constituted less than 10 percent, sometimes considerably less than 10 percent, of all divisions in each Parliament, and in the 1959-1964 Parliament the figure was only 13.5 percent of all divisions (see Table 3, below). Indeed, in the two Parliaments of 1951-1955 and 1955-1959, there were a total of only 23 divisions in which one or more Conservative Members entered the lobby against their own party (Norton, 1975, pp. 89-136).

When dissenting votes were cast, they had little serious effect. Conservative Members, on the whole, did not dissent in large numbers. Of the 213 divisions in which Conservative Members cast dissenting votes in the years from 1945 to 1970, 88 involved one dissenting Member only. Throughout the period of Conservative Government from 1951 to 1964, there was only one occasion when Conservative backbenchers entered the Opposition lobby in sufficient numbers to embarrass seriously (though not remove) the Government's majority.[1] Labour Members on occasion did dissent in large numbers, but when they did so their party was either in Opposition and/or the Conservatives abstained from voting or entered the lobby to support the Labour Front Bench: the greater the number of dissenters, the less likelihood there was of their entering a whipped Conservative lobby (see Table 4, below). Twenty or more Labour Members dissented in a total of 66 divisions in the 1945-1970 period, but only one of these occasions entailed entering the Conservative lobby on an important issue and embarrassing the Government's majority (see Norton, 1975, p. 296). "Despite occasional deviations," as Ergun Ozbudun (1970, p. 305) noted, "party cohesion is a well-established norm in British politics."[2] The "occasional deviations" were few, and rarely of a magnitude to worry the party whips or business managers.

The Government of the day was able to carry each division without fear of defeat because of dissent by its own backbenchers *or* because of opposition parties combining against it in a fully whipped division. Each Government had an overall majority, and that majority was prepared to sustain the Government in the lobbies. A few quickly forgotten defeats did occur—a total of ten, concentrated in though not confined to the 1950-1951 and 1964-1966 Parliaments—but these were attributable to poor parliamentary management by the Government whips (for example, miscalculating the number of Government supporters needed to carry a division) or, as in 1953 and 1965 (Wigg, 1972, pp. 165-167; *The Times*, 8 July 1965),[3] deliberate Opposition ploys, with Opposition Members leaving the House, hiding nearby and then returning for a division. Due to the rarity of Government defeats, and the rare defeats themselves being generally overlooked, the view was expressed that a defeat in the lobbies had to be reversed or else the Government had to seek a vote of confidence from the House, request a dissolution, or resign (or some variant on this theme, some sources not including the discretion to seek to reverse a defeat; see Norton, 1978b, pp. 360-361). In 1964, Graeme Moodie (p. 100) wrote that, except for free votes, "it is now assumed as a matter of course that any defeats in the House of Commons must be reversed or else lead to the Government's resigning or dissolving Parliament."

To summarize, in the postwar period from 1945 to 1970 two large parliamentary parties faced one another across the floor of the House of Commons, both displaying a high degree of cohesion, one having an overall majority and able to implement its wishes through that majority in the division lobbies. In the 1970s, such observations could no longer be made, at least not with such certainty: each required serious qualification.

## The Changes of the 1970s

The decade of the 1970s witnessed a considerable change in parliamentary behaviour: factors external and internal to the House of Commons combined to strip the above three generalizations of much of their usefulness. Indeed, to a large extent their opposites may be stated as being, or having been, applicable to the 1970s. These may be identified as follows.

### *Minority Government*

In 1970, a Conservative Government was returned with an overall majority of thirty, reduced to fourteen by the end of the Parliament. In February 1974, the Prime Minister, Edward Heath, went to the country; from the time of that General Election to the end of the decade, minority Government was as much a feature of British politics as was majority Government. In the short Parliament of March to October 1974, the Labour Government commenced with only 301 seats in a 635-Member House. In October 1974, the Government was returned with a small overall majority of three (Table 2). Through bye-election losses (and later defections[4]) this was gradually reduced, and in April 1976, with Mr. John Stonehouse's resignation of the Labour whip, it lost it altogether. When the House was dissolved in April 1979, there were 305 Labour Members out of a total of 627 voting Members (vacancies and the Speaker and his three Deputies excluded); the Government was in a nominal minority by seventeen votes. The short 1974 Parliament was the first one-session Parliament since 1924. The 1974-1979 Parliament was the only one of the century in which a Government slipped from having a majority to a minority of Members and continued to govern for a full five-session Parliament.

TABLE 2
Parliamentary Majorities, 1970-1979

| Parliament | Party Returned to Office | Majority ... <br> ... following General Election | ... at Dissolution |
|---|---|---|---|
| 1970-1974 | Conservative | 30 | 14 |
| 1974 | Labour | -33 | -37 |
| 1974-1979 | Labour | 3 | -17 |
| 1979- | Conservative | 43 | |

### *High Incidence of Intra-Party Dissent*

By British parliamentary standards, the decade witnessed a high incidence of intra-party dissent, with each of the Parliaments of 1970-1974, 1974, and 1974-1979 experiencing the public expression of significant dissent in the division lobbies. Twenty percent or more of divisions in each Parliament witnessed dissenting votes, and in some individual sessions the proportion was well over 30 percent. The 1970-1974 Parliament saw a considerable increase in dissent by Conservative backbenchers, producing Conservative Members who were willing to vote against the Government not only in more divisions than had previously been the case, but also (unusual for a party of tendencies as opposed to factions[5]) more consistently and in greater numbers; the Parliamentary Conservative Party came the closest it had been in postwar history to experiencing something akin to factional dissent (Norton, 1978a, ch. 8 and pp. 244-254; 1976b). A total of 204 divisions witnessed dissenting votes by one or more Conservatives, 64 of them involving ten or more dissenters; in 50 of these 64 divisions, the dissenters entered the whipped lobby of their opponents (Norton, 1978a, ch. 8).

A high incidence of dissent was maintained in the short 1974 Parliament, especially on the Conservative side of the House (Norton, 1977a), and continued in the 1974-1979 Parliament, though with Labour Members now taking the lead in voting against their own Government. No less than 28 percent of all divisions in the latter Parliament saw votes cast against their own party by one or more (usually more) Labour or Conservative Members. Labour Members proved increasingly willing to vote against their own party: one or more Labour Members voted against their own side in 30 percent of whipped divisions in the 1976-1977 session; in the following session, the proportion was 36 percent of divisions, and in the last session of 1978-1979 the proportion was an unprecedented 45 percent (Norton, 1980). This was coupled with a greater willingness to enter the official Conservative lobby (see Table 4, below).

Conservative backbenchers, for their part, proved willing also to express their disagreement with their leadership in even more divisions than in 1970-1974, albeit of less significance now that they were in Opposition. The result of this greater voting independence by Members on both sides of the House was that there were more divisions experiencing dissenting votes in the 1974-1979 Parliament than there were in the whole of the period from 1945 to 1970 (see Table 3).

The root cause for this change in behaviour is to be found in the 1970-1974 Parliament. An analysis of that Parliament has identified the variable responsible for the increase in and seriousness of Conservative backbench dissent as the Prime Ministerial leadership of Mr. Edward Heath. The policies which Mr. Heath was responsible for introducing (or was closely identified with), the manner in which they were introduced and then pushed through the Commons, his failure to communicate effectively with his own backbenchers either at the personal level of friendship or at the intellectual level of explaining his policies and actions (especially the so-called U-turns of 1972), and his failure to use judiciously his powers of appointment and patronage, all coalesced to produce a parliamentary party that was unsure of itself and divided internally, with those Members who disagreed with Government policy believing that they had no acceptable alternative but to vote

TABLE 3
Divisions With Dissenting Votes, 1945-1979

| Parliament (Dates and no. of sessions) | Number of Divisions With Dissenting Votes | | | Percent of Divisions With Dissenting Votes |
|---|---|---|---|---|
| | Total | Labour[a] | Conservative[a] | |
| 1945-50 (4) | 87 | 79 | 27 | 7 |
| 1950-51 (2) | 6 | 5 | 2 | 2.5 |
| 1951-55 (4) | 25 | 17 | 11 | 3 |
| 1955-59 (4) | 19 | 10 | 12 | 2 |
| 1959-64 (5) | 137 | 26 | 120 | 13.5 |
| 1964-66 (2) | 2 | 1 | 1 | 0.5 |
| 1966-70 (4) | 124 | 109 | 41 | 9.5 |
| 1970-74 (4) | 221 | 34 | 204 | 20 |
| 1974 (1) | 25 | 8 | 21 | 23 |
| 1974-79 (5) | 423 | 309 | 240 | 28 |

[a] As one division may witness dissenting votes by Labour *and* Conservative Members, the Labour and Conservative figures do not necessarily add up to the number in the total column.

against their own side (Norton, 1978a, ch. 9). Although Mr. Heath was to be removed from the leadership of the Conservative Party in February 1975, the foregoing factors contributing to his defeat (see Norton, 1976d), the serious dissent by Government backbenchers during his premiership provided precedents for later occasions of significant dissent by Labour Members, as indicated in Table 4 (Norton, 1978a, p. 274; note also the comments of Aitken, 1978; "Talking Politics," 1978; Braine, 1979). The importance of this dissent, though, was not merely that it increased quantitatively, but, more importantly, that it did so qualitatively, if one may so term it. For the first time in postwar history, Government backbenchers proved willing to join with their opponents to defeat their own Government in the division lobbies.

### *Multiple Government Defeats*

The decade of the 1970s witnessed a significant number of Government defeats in the lobbies, significant not only by comparison with preceding postwar Parliaments but also by comparison with Parliaments of this century as a whole. Between July 1905 and March 1972, according to the researches of this author, there were 34 Government defeats in the division lobbies (there were no defeats in the period from 1966 to 1972), that is, 34 defeats in a 67-year period. Between April 1972 and April 1979–a period of only 7 years–there was a total of *65 Government defeats* in the House of Commons' division lobbies. Six of these took place in the 1970-1974 Parliament, 17 in the short 1974 Parliament, and the remaining 42 in that of 1974-1979 (Norton, 1978a, p. 207; Norton, 1980, appendix).

Not only were there a considerable number of defeats, but many were on issues of importance, indeed, increasingly so. They included defeats on the Second Reading of a Bill (the Reduction of Redundancy Rebates Bill in February 1977), only the second time this century that a Government has lost the Second Reading of a measure, and on the Third Reading of a Bill (the Local Authority Works [Scotland] Bill in July 1977). However, these two defeats, given the circumstances in which they took place, are not as important as on the face of it they may appear. Other defeats encompassed the following: on the central provisions of a Bill (the Dock Work Regulation Bill, which, combined with a later defeat, was effectively lost); on important financial legislation (notably the 1978 Finance Bill); on a guillotine motion for the Government's most important constitutional measure (the 1977 Scotland and Wales Bill), as a result of which the Bill in its original form was lost; on important provisions of the subsequent Scotland Bill and Wales Bill (including the fateful amendments stipulating a 'Yes' vote by 40 percent of all eligible voters in the 1 March 1979 referendums); on Expenditure White Papers in

## TABLE 4

### Size of Dissenting Labour Lobbies: 1945-1979

(Number of divisions in which Labour dissenters entered official Conservative lobby given in parenthesis)

| Number of Dissenting Labour MPs | Number of Divisions 1945-50 | 1950-51 | 1951-55 | 1955-59 | 1959-64 | 1964-66 | 1966-70 | 1970-74 | 1974 | 1974-79[a] |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 only | 16 (14) | 1 (0) | 1 (1) | 2 (0) | 12 (7) | 1 (1) | 18 (13) | 13 (7) | 1 (1) | 53 (32) |
| 2-9 | 27 (15) | 2 (1) | 5 (0) | 6 (1) | 8 (0) | 0 (0) | 16 (4) | 6 (2) | 0 (0) | 87 (41) |
| 10-19 | 17 (4) | 1 (0) | 3 (0) | 0 (0) | 1 (0) | 0 (0) | 44 (1)[b] | 5 (1) | 1 (0) | 49 (14) |
| 20-29 | 5 (1) | 0 (0) | 2 (0) | 0 (0) | 4 (0) | 0 (0) | 10 (1) | 1 (0) | 1 (0) | 31 (4) |
| 30-39 | 9 (1) | 1 (0) | 2 (0) | 1 (0) | 0 (0) | 0 (0) | 10 (0) | 3 (0) | 2 (0) | 20 (0) |
| 40-49 | 4 (0) | 0 (0) | 1 (0) | 0 (0) | 1 (0) | 0 (0) | 5 (0) | 3 (0) | 2 (0) | 25 (1) |
| 50 or more | 1 (0) | 0 (0) | 3 (0) | 1 (0) | 0 (0) | 0 (0) | 6 (0) | 3 (1)[c] | 1 (0) | 44 (3) |
| Total | 79 (35) | 5 (1) | 17 (1) | 10 (1) | 26 (7) | 1 (1) | 109 (19) | 34 (11) | 8 (1) | 309 (95) |

[a] In addition, in this Parliament Labour dissenters joined with a sufficient number of unwhipped Conservative Members to impose Government defeats on six occasions.

[b] Labour Members voting against Government during passage of Parliament (No. 2) Bill not included as voting in official Conservative lobby (Opposition whips not being applied in the divisions).

[c] Vote on the principle of entry into the EEC when Labour dissenters entered unwhipped Conservative lobby.

practice in 1976 and 1977 (both precipitating confidence votes); on the central provision of the Government's economic policy (sanctions against firms breaking the 5 percent pay limit) in December 1978; and, of course, on a motion of no confidence on 28 March 1979. Other defeats included those on the issue of holding the inquiry into the Crown Agents' affair in public and on the devaluation of the so-called Green Pound. All of these examples are taken from the 1974-1979 Parliament. The defeats in the division lobbies were reinforced also by defeats in standing committees. In the 1970-1974 Parliament there were defeats on 24 issues, a total of 28 divisions being involved (Norton, 1976c); in the 1974-1979 Parliament, the number of defeats appears to have been in the region of no less than 100 (estimate based on Schwartz, 1978).[6]

These defeats, of course, were defeats on measures that the Government brought before the House. There are instances as well of the Government withdrawing Bills apparently for fear of defeat as, for example, a measure to regulate shotguns in the 1970-1974 Parliament (Lawson and Bruce-Gardyne, 1976, pp. 174-175), and the 1976 Weights & Measures Bill, withdrawn two days before its scheduled Second Reading (Burton and Drewry, 1978, p. 143).

The defeats taking place in the 1970s were the consequence of minority Government and the increase in intra-party dissent. Those in the short 1974 Parliament, and a minority (19) of those in the 1974-1979 Parliament, were attributable to opposition parties combining against a minority Government. The 6 defeats in the 1970-1974 Parliament, and a majority (23) of those in the 1974-1979 Parliament were attributable to dissent by Government backbenchers. Of the 6 defeats under Mr. Heath's Government, the most important was that on the immigration rules in 1972 (Norton, 1976a), which provided a precedent for later defeats. As one leading dissenter noted to the author, once the Government had been defeated on one occasion it was much easier to do it a second time. Just as one defeat provided a precedent for another, so the experience of one Parliament provided the precedent for another. Conservative backbenchers demonstrated that it was possible to join with the Opposition and impose a Government defeat without necessarily endangering the Government's continuance in office. It was a precedent recognized and used by a number of Labour Members opposed to various Labour Government policies or proposals, and after several defeats in the 1974-1979 Parliament, as one Labour Member responsible for engineering a number of them noted (in the author's presence), their occurrence came to constitute something of a habit.

To summarize, the decade of the 1970s saw a period of minority Government, a high incidence of Conservative and (later) Labour Members voting against their own party, and, as a result, a significant number of Government defeats in the division lobbies, some of them taking place on important issues, indeed, on occasion, on items central to the Government's economic strategy. These changes are important in themselves. They also have important implications for previously held assumptions as to why Members did not engage in such a degree of voting independence and their reasons for refraining from seeking consciously (when on Government backbenches) to defeat the Government on issues on which there was disagreement with the line taken by the Treasury Bench.

### Wider Implications of Behavioural Changes

In order to explain the high level of cohesion and the rarity of Government defeats in the postwar period from 1945 to 1970, a number of hypotheses were advanced. Some of these have retained their usefulness: the events of the 19th century and the consequent growth of organised, mass-membership political parties (and party allegiances) help explain a continuing high level of party cohesion in the Commons (see Norton, forthcoming, ch. 2). Even in the 1970s, Members voted against their own parties exceptionally rather than usually. However, although a number of assumptions were prevalent in the pre-1970 period as to why there was such a high level of cohesion in the postwar period and no Government defeats (other than those wrought on odd occasions by mismanagement or, in Government eyes, Opposition trickery), these were clearly vulnerable as a result of the events of the 1970s. The opposition of a number of Conservative backbenchers to a number of Government proposals and their exasperation at Mr. Heath's manner of pushing them through and unwillingness to heed their criticisms in the 1970-1974 Parliament, aided later to some extent by periods of minority Government, helped to create the conditions which led to previous assumptions about influences on parliamentary behaviour either ceasing to be relevant or to the realization that possibly they had not been relevant before anyway.

Prior to the 1970s, it had been assumed that Members were unwilling to engage in serious dissent because they believed that voting against one's own party, if in Government, could lead to a defeat which could bring it down; that the Government had a monopoly of or at least superior sources of information which could not be matched by the official Opposition or by backbenchers on both sides of the House; and that the whips, and constituency parties, would take disciplinary action against dissenting Members. Let us look at each of these in turn.

#### *Fear of Defeat Precipitating a General Election*

There was a popular belief among Members of Parliament that to vote against one's own party in Government could lead to its defeat and precipitate a General Election. This belief had two consequences.

Firstly, there was a rough correlation between a Government's overall majority and the willingness of its backbenchers to vote against it. The larger the majority, the more willing were they to allow their dissent to be carried to to the lobbies—as in the Parliaments of 1945-1950, 1959-1964 and 1966-1970—knowing that there was little likelihood of defeating the Government; the bigger the majority, the greater the number of dissenting votes it could sustain. The smaller the majority, as in the Parliaments of 1950-1951, 1951-1955 and 1964-1966, the less willing were Government backbenchers to dissent (compare Tables 1 and 3). This correlation was recognised by Members and whips alike.

However, in the 1970s it did not hold. Government supporters proved willing to vote against their own party, regardless apparently of the size, or lack, of its overall majority. The constraint of being unwilling to defeat the Government on occasion no longer held: Members knew they could impose a defeat without necessarily endangering its life. This point was brought home by the defeats in the 1970-1974 Parliament, especially those on the immigration rules in 1972, because of its importance (Norton, 1976a), and on an amendment to the Local Government Bill earlier in the same year, because of its political insignificance. That defeat was on the issue of which local authorities should have power to dispose of (as well as collect) garbage; this was hardly an issue likely to motivate a Government resignation (see Norton, 1978a, p. 106).

On this point, it is important to note also that some of the defeats in the 1974-1979 Parliament were attributable to cross-voting by substantial numbers of Labour backbenchers, the Government being defeated on occasion by large majorities; it was not just the case of one or two Labour Members making the difference between success and failure in a division in which the parties were fairly evenly balanced. For example, the Government was outvoted by 230 votes to 147 on an amendment to the 1975 Industry Bill when 50 Labour MPs cross-voted; on other occasions it went down to defeat against majorities of 86 (amendment to the Scotland Bill), 72 (amendment to the Wales Bill), and 71 (another amendment to the Industry Bill). In short, there were instances when the Government's small and then nonexistent overall majority did not appear to have acted as a constraint upon Labour Members who opposed Government policy, certainly not to the same extent as in previous periods of Labour Government.

Secondly, and concomitantly, there was the belief that a defeat in the division lobbies had either to be reversed or else the Government must request a dissolution or resign (or, as we have noted, some variant on this theme). It was a belief which found expression in a number of works and among MPs themselves. However, while influencing parliamentary behaviour, it was a belief which may be described as something of a constitutional myth. It had no basis in any authoritative original source, nor was it a 'convention' based on any consistent parliamentary practice. Indeed, it was belied by experience, including that of 1945 to 1970, during which time, as we have seen, there were ten defeats in the lobbies, the most important of which (on the Finance Bill in 1965) was accepted by the Government of the day. Nevertheless, these defeats were quickly forgotten, and most Members appear to have continued in their belief.

The experience of the defeats in the 1970s helped lay this myth to rest. As the decade progressed, there was a much greater realization that a Government was constitutionally required to resign or request a dissolution in consequence only of a vote of no confidence. This point was made by a number of Members when dissenting from Government policy in the 1974-1979 Parliament, as, for example, George Cunningham during debate on the guillotine motion for the Scotland Bill (*HC Deb.* 939, c. 615). The defeats that took place in the 1970s helped reinforce what in fact may be described as having been the constitutional reality since the advent of party government in Britain in the 19th century, namely that there are essentially three types of Government defeats in the Commons: those on votes of confidence, in consequence of which the Government is required to resign or request a dissolution; those on issues central to Government policy, in response to which the Government may *either* seek a vote of confidence *or* request a dissolution or resign; and those on issues which are not central to Government policy (as, for instance, amendments to a Bill, as opposed to defeats on Second Readings of major Bills), in response to which the Government need determine only whether to accept them or to attempt their de facto reversal.[7]

By their nature, most divisions in the Commons are on matters not central to Government policy. The distinction between these types of defeats has existed since the 1830s, and was identified explicitly in this century by Prime Minister Stanley Baldwin in 1936 (*HC Deb.* 310, c. 2445), being delineated more recently by the author (Norton, 1978b). The distinction has been recognised and adhered to by succeeding Governments, those in the 1970s responding in a manner that accorded with precedent. The Labour Government of 1974-1979 survived various votes of confidence, as in March 1977, defeat being averted by an agreement between the Government and the Parliamentary Liberal Party, the so-called "Lib-Lab Pact" (see Michie and Hoggart, 1978). Hence, it survived in office until losing by one vote the decisive division on 28 March 1979, as a consequence of which the Prime Minister, Mr. James Callaghan, had an audience with the Queen on the following day to request a dissolution. The Government suffered a small number of defeats on issues central to Government policy–the 1976 Expenditure White

Paper, the 1977 Expenditure White Paper in practice, and the policy of employing sanctions against firms breaking the 5 percent pay limit. Each of these defeats was followed by a confidence vote, though one Cabinet Minister did apparently raise the possibility of a dissolution following the 1976 defeat (see Norton, 1976e). The remaining defeats were on issues that the Government deemed not central to its policy for the Parliament, and more often than not accepted such defeats. The number of defeats, and the Government's response to them, helped make Members and others aware of what for all intents and purposes was the constitutional reality.

### *Party Whips*

There was the assumption that party whips were powerful disciplinarians, ready to pounce upon dissenters and mete out serious punishments. This is, and to some extent, always has been, a misleading assumption. It is important to stress that the main functions of the whips, as they have been throughout this century and prior to it, are those of communication and management (Norton, 1979). It is true that they help to ensure that parliamentary parties are cohesive in their voting behaviour, but mostly what they are doing is helping facilitate the cohesiveness of those who wish to be cohesive. It is only when Members indicate their unwillingness to be cohesive on a particular issue that the presumed "disciplinary" role of the whips comes into play, and what their power in this respect amounts to is that of persuasion. If Members express an intention to vote against their own side, the whips try to dissuade them by appeals to party loyalty and by putting the Front Bench case; if that fails they often arrange for the Members concerned to see the relevant Front Benchers for further talks. Beyond that, there is little in practice they can do.

The power to withdraw the written whip (receipt of which signifies membership of a parliamentary party) has fallen into disuse on the Conservative side of the House. It was last employed in 1942 (Cross, 1968) and apparently last contemplated in the 1959 Parliament (Jackson, 1968, pp. 302-303; Norton, 1978a, ch. 6). On the Labour side it has never resided with the whips but rests with meetings of the Parliamentary Labour Party (see Norton, 1979, p. 25). Even if it were readily available to the whips, its use would likely cause more problems than it would solve, alienating the Member concerned and his vote for the rest of the Parliament, and possibly his constituency party as well.[8]

Influence over promotion prospects, also associated with the whips (especially the Chief Whips), may have some influence, but a Member's voting behaviour is merely one of several factors likely to be taken into account. A

Member may receive promotion on the basis of ability, popularity within the parliamentary party or support among a section of the national party, regardless of dissenting behaviour, while a Member who votes loyally with his party in the lobby may get passed over for promotion because of incompetence or unpopularity with his colleagues or the Prime Minister. Of course, a dissenter may be promoted anyway as a means of silencing him. A number of Labour Members with backgrounds of independent voting behaviour found their way on to the Treasury Bench under the premierships of Harold Wilson and James Callaghan.[9] Indeed, by the end of the 1974-1979 Parliament, Mr. Callaghan would have found it difficult to find a backbencher to promote who had not cast at least one or two dissenting votes in the Parliament. Past dissenting behaviour (with two possible exceptions) appears to have been no bar in Mrs. Thatcher's selection of Ministers in 1979.[10] If a Prime Minister was consistently to exclude dissenting backbenchers from office, as Mr. Heath was accused of doing, it would fuel resentment on the backbenches and affect adversely the morale and effectiveness of the parliamentary party, as Mr. Heath discovered (Norton, 1978a, ch. 9).

Other powers associated with the whips, such as selection for parliamentary delegations and committees, and the distribution of honours, are useful but rather limited tools at the whips' disposal, and unlikely to influence Members determined upon dissent. As Uwe Kitzinger (1973, p. 173) observed, they constitute "the small change of political life, with which habits of conformity can be cemented, but with which no one would expect to buy great votes of principle."

The events of the 1970s helped reveal more clearly that the whips were not wielders of great disciplinary powers as popularly believed. There was a significant increase in dissent which they were unable to prevent and to which they could not respond with disciplinary weapons,[11] hence the realization that they were not a strong constraint upon Members' dissenting behaviour if other supporting variables were not present, such as the belief that dissent might lead to defeat and a change of Government. If they were and are strongly motivated, Members could and can ignore the whips without harbouring fears of serious retribution.

### *Constituency Parties*

It was generally believed also, doubtless influenced by the experience of the "Suez rebels" of the 1950s, that constituency parties would take action against Members engaging in serious dissent (see Epstein, 1960). The experience of the 1970s, especially on the issue of entry into the European Communities, and, in the latter half of the decade, on the issue of devolution of certain powers to elected assemblies in Scotland and Wales, revealed that pressure from local parties was not quite as effective as was perhaps popularly believed.

Members who disagreed with their leaders on the issue of entry into the EC were able to take their dissent further than many previously would have believed possible. Despite Mr. Heath making the Second Reading of the European Communities Bill a vote of confidence, and the issue the central item of Government policy in the Parliament, none of the Conservative Members who opposed it consistently (including on Second Reading)[12] was denied re-nomination by his constituency association, though a number did run into serious trouble (Norton, 1978a, ch. 7). On the Labour side, the issue appeared to have contributed to the troubles of Mr. Dick Taverne in his Lincoln constituency, but it seemed to tip the balance in an already existing constituency dispute rather than motivating the dispute itself.

Dissenters on the issue of devolution appeared to encounter even fewer problems: they would seem to have suffered retribution neither from their local associations nor from their national parties and a number now occupy Front Bench positions.[13] An exception might be George Cunningham, one of the leading anti-devolutionists on the Labour side and author of the "40 percent" amendment, who did encounter some trouble with his local party, but it was not on any serious scale.

Thus while constituency parties *do* remain a strong constraint upon Members,[14] especially through the process of anticipated reaction, they are not quite such strong constraints as was popularly believed. Indeed, the point can be made that, on the Labour side especially, pressure from certain constituency parties may encourage Members to disagree with the party line in the Commons rather than adhere to it.[15]

### *Government's Sources of Information*

Members appeared willing to accept that the Government had sources of information which they could not effectively challenge. Government backbenchers seemed willing in consequence to acquiesce in Government policy or, if opposed, to dissent half-heartedly, while the Opposition, though willing to enter the lobby often (albeit not always) against the Government, was conscious of the limitation of not knowing all the pertinent facts and figures. This view is still held by many Members, and there is much to be said for it: the Opposition and backbenchers on both sides of the House do not have the resources of the Civil Service at their immediate disposal.[16] However, in the 1970s, Members (or at least some of them) proved less willing to accept as a corollary of this that "the Government knows best." They were prepared to rely more than before upon their own instincts in challenging their own Front Benches, and on occasion to rely upon their own sources of information, as, for example, the Conservative opponents of the Maplin Development Bill in 1973. There was much less willingness to accept what the Government said at face value. One may speculate that this was encouraged by the publication of Richard Crossman's *Diaries of a Cabinet Minister* which revealed clearly that decision making in Government was not necessarily a rational process based on a balanced evaluation of options and empirical data. As they showed, especially Volume III (1977), decision making was based often upon the most partisan or personal of reasons.

This increased unwillingness to accept that "the Government knows best" was reflected in the defeats inflicted in the 1970s. Of special interest in this context was the defeat on the Crown Agents' affair in December 1977. The Government argued that the inquiry into the activities of the Crown Agents should be held in private. The Opposition Front Bench (the alternative Government) proved unwilling to jettison altogether the belief that on certain matters the Government of the day does know best, and in the division abstained from voting. It was left to backbenchers on both sides of the House, who wanted a public inquiry under the provisions of the 1921 Tribunal of Inquiry (Evidence) Act, to combine and impose a defeat upon the Government, doing so by 158 votes to 126 (*HC Deb.* 940, c. 1093-1096). It was not the only example of a Parliamentary defeat being imposed by a combination of backbenchers on both sides of the House.[17] This, it could be contended, was a healthy development, as it could help force the Government to be more open, not only with its own backbenchers but also with the House as a whole.

Thus, the changes of the 1970s helped demonstrate that a number of constraints presumed to operate upon Members contemplating dissent were no longer as potent (or had never been as potent) as was previously believed. However, the implications of the changes we have identified do not end there. Although generally overlooked, they have had and continue to have important implications for the movement for parliamentary reform.

### The Movement for Parliamentary Reform

In the postwar period, pressure for a reform of the House of Commons, which had been a notable feature of the late 1920s and the 1930s, returned with some force in the late 1950s and more especially the early 1960s. Its emergence at a time of economic and political difficulty for Britain, with some questioning of the country's world role, was probably not a coincidence. In seeking reasons for and ways out of the nation's problems, observers cast critical eyes over national institutions: the pseudonymous Hill and Whichelow's *What's Wrong with Parliament?* (1964) was one in a series, others in the series covering industry and even the Church. In looking at the Commons the reformers found it wanting, in part because of the three factors identified at the beginning of this paper: two large parliamentary parties facing one another, one with an overall majority and able to have its way in each division because of the voting cohesiveness of its Members, thus ensuring the passage of measures decided upon elsewhere, in Cabinet and in Government Departments. In the balance between the Commons and that element of it that constituted the Government, the scales were perceived as being tipped too far in favour of the latter. The House was fulfilling clearly the function of legitimization, but the two-party adversary system that had developed was viewed as affecting adversely the ability of the House to fulfil its function of scrutiny and influence of Government (see Norton, forthcoming).

This perception fueled pressure for internal, largely procedural reforms of the House as, for example, new select committees, morning sittings of the House, better pay and facilities for Members, a modernizing of procedure for debating financial matters, and the broadcasting of proceedings. The pressure, led by Professor Bernard Crick in the 1960s, and aided by a reforming Leader of the House of Commons, Richard Crossman, resulted in a number of reforms and procedural experiments in the 1966-1970 Parliament. These included the reforms just mentioned, though the House failed to approve a recommendation for the televising of proceedings. Others were to follow in the 1970s, including the creation of the Expenditure Committee to replace the Estimates Committee; the limited provision of public funds to opposition parties to help them fulfill their parliamentary duties; and the radio broadcasting of proceedings, initially on a trial basis and then made permanent (for details of the reforms in the period from 1966 to 1975, see Stacey, 1975).

On the whole, the reforms themselves achieved little. They ranged from the occasional modest success (the odd select committee) to outright failure (as with morning sittings, which were abandoned) and certainly did not achieve as much as the reformers would have liked. Even the more recent change of the broadcasting of proceedings did not have the success hoped for, with the BBC deciding in mid-1979 not to continue the live broadcast of Prime Minister's Question Time.

Changes failed to loosen the grip of the Government upon the House of Commons, and as this became more apparent the reform movement itself (in so far as it ever constituted a coherent 'movement' at all) divided into two camps: those who continued to press for more internal, procedural reforms, the "internal reformers"; and those who now advocated more radical change through electoral reform, the "external reformers" (Norton, 1978c). The latter took the view that the procedural reforms attempted constituted no more than mere tinkering with existing structure. They charged that the fault itself lay with the basic nature of parliamentary politics, with two parties facing one another in an adversary relationship, one implementing its policies through an overall parliamentary majority (facilitated by the "first-past-the-post" electoral system), the other party subsequently gaining office at an election and reversing the policies of its predecessor through *its* newly acquired overall majority.

The reformers argued that electoral reform–the introduction of a system of proportional representation–would have a number of positive benefits. On the basis of existing voting patterns, the reforms would result in the creation of a more representative centre-coalition Government which would be capable of ensuring policy continuity, with no fluctuation from one opposing party to another at elections. In addition, Members would be much freer of party ties. Voters would have the opportunity to choose between candidates of one party instead of being restricted to one party candidate, and Members would thus be more responsive to constituency interests. Pressure for electoral reform, based on this argument,[18] gathered pace in the mid-1970s and was led by academics such as Professor S.E. Finer, with his reader *Adversary Politics and Electoral Reform* (1975), and, in various writings, by S.A. Walkland (1976, 1977, 1979). Pressure for internal reform also continued, though overshadowed somewhat by the external reformers, and found expression in works such as Lisanne Radice's Fabian Pamphlet, *Reforming the House of Commons* (1977). In pressing for external or internal change, the reformers tended to ignore the developments taking place at that time within the House itself.

The events of the 1970s, and primarily the increase in intra-party dissent that produced Government defeats, demonstrated a new willingness on the part of a sufficient number of Members to assert themselves in the division lobbies and to delineate the broad limits within which Government could operate. Had it not been for dissent by Labour backbenchers, Britain would now almost certainly, as a result of the Labour Government's devolution legislation, have a new constitutional structure. The power that was exerted may be described as essentially negative (in the sense of defeating Government proposals rather than being involved in the policy-formulating process), but the method has proved effective and thus may point the way to effective reform. If Members wish for reform–and an essential prerequisite for effective reform is a willingness for such reform to be effective by MPs themselves–it suggests that they have the power to achieve it.

Electoral reform in Britain is an unlikely prospect at the moment. Both Conservative and Labour Parties (the two beneficiaries of the existing electoral system) are opposed to it. The Prime Minister, Mrs. Margaret Thatcher, is a well-known opponent, as are Members who do not wish to vote themselves out of their own seats, which would be the practical effect in some cases. The extent to which it is an unlikely prospect has been demonstrated by votes in the Commons in recent years: in the 1974-1979 Parliament, an amendment to the Scotland Bill to provide for election to the proposed Scottish Assembly by a system of proportional representation was defeated, on a free vote, with a majority of 183 against it. It is not an issue whose time has come: indeed, there would appear to be less parliamentary support for electoral reform now than there was in the 1930s.

The reformers' arguments are also open to criticism. Policy discontinuity is as likely to be the product of policy change by Government during the life of a Parliament (as, for instance, the so-called U-turns on industry and the economy in 1972) as it is the result of a change in Government following a general Election. Further, policy continuity and greater freedom of voting action for Members of Parliament do not appear to be necessarily compatible aims. "Even under the existing system of strong party ties, Members are capable of interrupting policy continuity . . . How much more so would it be under the system envisaged by the reformers?" (Norton, 1977b, p. 169).

As for internal reform, that was ineffective in so far as it depended upon the Government initiating and implementing the measures required, measures that were supposed to provide a means of scrutiny, of possible criticism, of Government. Governments in practice, and more especially their permanent officials, are not too keen upon establishing bodies that may be in a position to challenge. Hence the limitations of the Crossman reforms. The reformers, such as Crick, also made the mistake of assuming that the House's power could be strengthened without detracting from the power of Government (what would be described in current parlance as a non-zero sum equation), and failed to pay due attention to the necessary prerequisite of effecting a change in attitude of Members themselves.

If reforms are to be introduced and made effective as a means of scrutiny, then the developments of the 1970s suggest that the answer lies with Members themselves. Support from Government or the official Opposition obviously helps, but in itself is not a sufficient condition: conversely, opposition from Front Benchers may be insufficient to prevent pressure for change. If a majority of Members wish for reforms, it is up to them to press the Government of the day to ensure their enactment and then to sustain them through their activities and, if necessary, their votes. As Edward du Cann noted in a debate on the civil service in January 1979, change generally does not come from the Government: "What is needed is an exercise of political will on the part of the House of Commons as a whole" (*HC Deb.* 960, c. 1342).

Indeed, toward the end of the 1974-1979 Parliament, a number of Members began to realise that the way to effective procedural reform lay through them. In August 1978, the First Report from the Select Committee on Procedure (HC 588, 1977-1978) was published, proposing a new structure of twelve select committees, based on Government Departments rather than subject areas, with specialist staff and power to take evidence from interested parties. Initially, it looked as if the Report would go the way of previous such Reports, ignored by the Government and consequently undebated. However, both the Opposition Front Bench and backbenchers on both sides of the House began to take an interest in its recommendations and started pressing the Government for action. As a result of this pressure, the anti-reform Leader of the House, Michael Foot, agreed reluctantly to a debate on the Report. In the debate, in February 1979, the Opposition Front Bench combined with Conservative and Labour backbenchers to support the view that the House should have the opportunity to vote upon the Procedure Committee's recommendations. This view was put forward with sufficient vigour for Mr. Foot to reverse his previous position and concede the opportunity for such a vote. The General Election of May 1979 then intervened. The Conservative Party manifesto contained a pledge to "give the new House of Commons an early chance of coming to a decision" on the recommendations, and the new Government honoured that pledge on 25 June 1979. As one of the Party's publications subsequently observed, "by tabling a motion authorising the establishment of twelve departmental Select Committees the Government paid prompt attention to recommendations originated by Parliament itself" (*Politics Today*, 1979). By 248 votes to 12, the House approved the setting up of the new committee structure.

If the new committees are to be effective in scrutinizing and influencing the activities of Government, then it is up to backbench Members on both sides of the House to make them so. There is still some way to go. The choice of Members to serve on the committees rests with the Committee of Selection instead of the whips (a useful development, though the independence of the Selection Committee is open to some question), but the House failed to approve amendments giving the committees power to compel the attendance of Ministers, to set aside a minimum of eight parliamentary days each year to debate committee reports, and to give them power to appoint sub-committees to consider matters of detail.[19] The Leader of the House, Norman St. John-Stevas, gave a pledge that Ministers would do all in their power to "cooperate" with the committees. However, the most cooperative of Ministers are likely to be those with least to hide, and attitudes toward the activities of such committees tend to vary from Minister to Minister, some doubtless influenced by their permanent officials. Shortly after the votes on the amendments, one Conservative MP was writing to his constituents that "my own faith in the willingness of Ministers to cooperate is not that great!" (Brotherton, 1979).

If the committees are not to go the way of their predecessors, Members on both sides of the House have to be prepared to sustain them, if necessary to strengthen them, and to ensure an effective linkage between their activities and the Floor of the House where Members' effective power, through the division lobbies, lies. The 1970s witnessed a new assertiveness on the part of backbench Members, the 1980s will see whether they are prepared to utilise that assertiveness to ensure that they may more effectively keep under scrutiny the activities of Government.

## Conclusions

The decade of the 1970s witnessed important changes in parliamentary behaviour, changes which were important not only in themselves but also for an understanding of future behaviour in the House of Commons. Especially important were the changes in Members' voting behaviour and their implications for the constraints presumed to operate on Members contemplating dissent. The return of a minority Government in the 1970s was the best known of the changes we have identified, but for the purposes of this paper arguably the least important. The uncoordinated voting behaviour of millions of electors resulting in no one party receiving an overall majority is not something that voters can necessarily or will consciously repeat in future elections, as the General Election of May 1979 has demonstrated already.

While millions of electors cannot coordinate their voting behaviour, the limited population of Members of Parliament can. The greater independence in voting behaviour in the Parliaments of the 1970s and the resulting Government defeats have meant not only that important precedents have been set, but their incidence has been such that many Members have acquired new habits. The realization of the weakness of the constraints presumed previously to operate has meant that Members may maintain their habits in the current and future Parliaments. As a number of MPs conceded in a radio discussion on the subject, there can be no going back to the rigid unity and 'discipline' of the 1945-1970 period ("Talking Politics," 1978). The current Parliament returned in May 1979 has borne witness already to the fact that it is different from pre-1970 Parliaments. The first Government Bill of the Parliament, the Kiribati Bill, was opposed in voice and vote by a number of backbenchers on both sides of the House. When a large number of Conservative Members made it abundantly, and publicly, clear that they were prepared to vote with the Opposition to defeat the Government if it persisted in its original proposals on Members' pay,[20] the Cabinet decided not to persist. As one political correspondent (Mount, 1979) noted in a somewhat different context, "the atmosphere in 1979 *is* different from 1970."

The events of the 1970s were such that it will be difficult for this and future Governments to take for granted the passage of measures which do not have the clear support of their own backbenchers and a majority of the

House. If there is to be a continuing shift in the balance between the House and that part of it which forms the Government in favour of the former, in order that it may fulfil more effectively its function of "scrutiny and influence" (see Norton, forthcoming), then it is up to Members of the current and future Parliaments to sustain the recent changes and, if necessary, assert their basic power through the division lobbies. The realization that Members would be prepared to contemplate such an assertion of power, as they have already on the matter of Members' pay, is sufficient to demonstrate that the contemporary House of Commons is a different animal from that which existed in the years from 1945 to 1970.

## NOTES

This article constitutes a revised version of a paper of the same title given at a session organized by the British Politics Group at the annual meeting of the American Political Science Association, Washington, D.C., August-September 1979. Some of the points made in it have been developed further in Norton (1980).

1. On an amendment to the Resale Prices Bill in March 1964, when the Government's majority was reduced to one (Norton, 1975, pp. 251-252).

2. For an explanation of the growth of party cohesion in the late 19th and the 20th centuries, see Norton (forthcoming, ch. 2).

3. It appears also to have been the case in the 1950-1951 Parliament (see Thornton-Kemsley, 1974, p. 234).

4. In addition to the resignation of the Labour whip by John Stonehouse in April 1976 (referred to in the text), the two breakaway Scottish Labour MPs, James Sillars and John Robertson, resigned the whip finally in July 1976, and the former Labour Cabinet Minister, Reginald Prentice, crossed the Floor of the House to join the Conservatives in October 1977.

5. The distinction between factions and tendencies is based on Rose (1964). The dissent by Conservative Members was not factional, but it extended beyond that of tendencies.

6. The figure of 100 or more was arrived at by assuming the same level of defeats in the remainder of the Parliament after publication of the Schwartz article as was identified for the period up to publication.

7. A motion, once defeated, cannot be reintroduced in the same session. To reverse a defeat, the language of the new motion must be "materially different" to that defeated though, in practice, seeking to achieve the same ends. Hence, all reversals that take place are de facto and never (in the same session, unless standing orders are suspended) de jure.

8. If a Member is well entrenched with his local party he is in a strong position to resist the wishes of his parliamentary leaders and whips. There would have been little point, for instance, in withdrawing the whip from Mr. Enoch Powell, the Conservative Member for Wolverhampton South-West, because of his persistent opposition to Government policy in the 1970-1974 Parliament (see Norton, 1978a, p. 172). Note also the experiences of Captain Cunningham-Reid when the whip was withdrawn from him (see Cross, 1968).

9. For example, Robert Cryer, Mrs. Judith Hart, Leslie Huckfield, Joe Ashton, John Ellis, Eric Heffer, James Wellbeloved, James Marshall and Mrs. Ann Taylor. A number of these did later resign office (Cryer, Ashton, and Ellis) in order to pursue disagreement with Government policy from the backbenches, and one was dismissed (Heffer) for speaking against Government policy in debate.

10. Among those with backgrounds of notable dissenting behaviour given Government office were John Biffen, Angus Maude (both appointed to the Cabinet), Neil Marten and Nicholas Ridley, as well as the pro-devolutionists identified below (Note 13). Another, Ian Gow, was appointed as the Prime Minister's parliamentary private secretary. The two exceptions were Winston Churchill and John Biggs-Davison, widely believed to have been denied office because of their votes against the Rhodesian sanctions order in 1978, for which both lost their then Opposition Front Bench posts.

11. This is not to say, though, that the persuasive powers of the whips, which can be considerable, did not help prevent the dissent from being even greater than it was (see the comments of Norton, 1978a, ch. 6).

12. Fifteen Conservative MPs voted against the Second Reading of the Bill (and a further five abstained from voting), the first time in postwar history that a number of Conservative Members had voted against a Conservative Government on a vote of confidence.

13. The four leading Conservative supporters of devolution who offered their resignations as Front Bench spokesmen in order to support the Scotland and Wales Bill, Alick Buchanan-Smith, George Younger, Hector Monro, and Malcolm Rifkind, are now Government Ministers, Mr. Younger being in the Cabinet. (Russell Fairgrieve, who offered his resignation as chairman of the Scottish Conservatives, is also a Minister). George Cunningham is an Opposition Front Bench spokesman.

14. Indeed, it is possible to contend, on the basis of the author's own experience and some of the comments made by MPs in King (1974), that more Members run into some trouble with their local parties than is generally realized. However, it is only in exceptional circumstances–more exceptional than is probably believed–that a Member is likely to be denied re-nomination.

15. In the 19th century, Liberal radicals who dissented stood to be applauded by their local caucuses, not disciplined (Berrington, 1968, p. 363). The same would appear to apply to a number of Labour Members, on the party's left wing, in the 1970s.

16. However, for an alternative comment, that *too much* information is available, to MPs and others, see Grimond (1979).

17. The Government was defeated on a new clause to the Criminal Law Bill, in a division in which the Opposition abstained officially from voting (*HC Deb.* 935, c. 531-534). Four defeats on amendments to the Scotland Bill took place in divisions in which Opposition Members were not whipped (*HC Deb.* 942, c. 1541-1544, 1545-1548; *HC Deb.* 944, c. 597-602, 601-606).

18. Pressure for proportional representation itself, on grounds of fairness, is not new, and has been a feature of Liberal Party policy for some time.

19. Only three of the committees (Home Affairs, Foreign Affairs, and Treasury & Civil Service) have power to appoint a sub-committee.

20. The attitude of Conservative Members was made clear (sometimes in quite bitter language) both in the 1922 Committee and on the Floor of the House. "If the Government pushes forward its three-stage proposal to the House of Commons, it is almost certain to be roundly defeated" (*The Economist*, 30 June 1979, p. 15).

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*"What are the pros and cons of the parliamentary and the presidential systems of government? What are the difficulties which are inherent in identifying the strengths and the weaknesses of both systems?"*

# Parliamentary and Presidential Government Compared

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In an essay published in 1879, Woodrow Wilson argued for the transformation of the American system of presidential government into one resembling a parliamentary system.[1] Almost a century later, critics of the American presidential system were again sounding this theme. The continued fascination of American observers with the parliamentary system, especially as it is practiced in Britain, is thus an established fact. Perhaps more impressive is the fact that whereas Wilson advocated the parliamentary system as a means of bringing about a concentration of political power, critics in the 1970's were looking to that system as a means of correcting what was seen as an excessive concentration of power.

What are the pros and cons of the parliamentary and the presidential systems of government? What are the difficulties inherent in identifying the strengths and the weaknesses of both systems?

The differences between a parliamentary and a presidential system of government may be easily stated. They relate mainly to the nature of the executive and to the executive's relationship with the legislature. In a presidential system like that of the United States, there is a single executive who is elected by the voters for a fixed term, and his office is separated from the legislature. In contrast, the executive of a British-type parliamentary system is a multi-member Cabinet whose members are chosen by, chosen from, remain members of, and are always removable by the legislature. An additional feature of the parliamentary system is that it separates the offices of titular chief of state (King in a monarchy, President in a republic) from the office of head of the Cabinet, i.e., the Prime Minister (or Premier or Chancellor). In a presidential system, in contrast, the two offices are combined in a single person. Occasionally discussions of the presidential system will introduce the subjects of federalism and judicial review. As the examples of the United States and Canada or Australia demonstrate, however, these governmental arrangements are peculiar to neither the presidential nor the parliamentary systems; accordingly, they will not be discussed here.

The arguments in favor of one or the other of the two systems of government may be grouped under two broad headings according to whether they relate to (1) the realization of democratic values, or to (2) the realization of the goal of effective government.

## DEMOCRATIC VALUES

*Control through Accountability.* It is generally agreed that a major dimension of democratic government is the ability of the citizenry, and especially a majority thereof, to make its wishes known and to have those wishes reflected in government action (or inaction). Since elections are the crucial mechanism through which popular control is exercised, citizens presumably should be in a position at election time to reward or to punish the policy makers for their past performance, or for their promise of future performance. But such ability assumes that the policy makers can be identified, that there is a "government" in whose hands the governing authority is solely concentrated.

One of the most persistent criticisms which has been leveled against the American presidential system is that it makes such a concentration of authority virtually impossible. The separation of the presidency from Congress insures fragmentation, as does the existence within Congress of powerful committees. The result is said to be the absence of accountability and the absence of meaningful policy choice at election time. This attack upon the American presidential system was first articulated by Woodrow Wilson, and since his time this theme has run consistently through a great deal of political science literature.[2]

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[1] "Cabinet Government in the United States," *International Review*, vol. 7 (August, 1879), pp. 146–163.

The British-type parliamentary system, in contrast, is usually cited by critics as one which permits the concentration of political authority in the hands of a Cabinet, which is backed solidly by a majority party in the House of Commons. The British voter, as a result, is seen as being in a position to identify those who are responsible for policy making and to register approval or disapproval at election time.

It is readily apparent that what is being compared in these discussions is not two abstract models of government, but two specific examples of workings of these models. More particularly, it is not so much the parliamentary system which is being praised as it is the British political party system, characterized by quality and discipline; nor is it the American presidential system *per se* which is being criticized as it is the American party system, characterized by fragmentation and (by British standards) a lack of discipline. One need look only at the experience of France under the Third and the Fourth Republics for evidence that the parliamentary system need not necessarily be accompanied by two disciplined political parties; it does not always present voters with choices of "governments" at election time. Even Woodrow Wilson, who began by urging the adoption of the parliamentary system in the United States, later concentrated his argument on the reform of the American party system. It should also be noted that the British party system has been shown to work somewhat differently than was once supposed. Thus, most British voters have been shown to cast their ballots not so much in terms of policy choices presented to them as according to their long-term identification with one party or the other.

In summary, what can be said is that the parliamentary system of government more easily permits the concentration of political authority than does a presidential system. Whether that concentration will occur will depend on the nature of the party system. If concentration does occur, there is no guarantee that the voter will behave according to the model of rational democratic man. Finally, it can be argued that the "all or nothing" choice which is presented to the British voter at election time gives him less control over his government than does the American system which allows the voter to elect a Representative, Senators, and a President.

One important question which may be posed, however, is whether either the presidential or the parliamentary system in some way encourages the formation of a two-party, disciplined-party system. Despite the exception presented by some (by no means all) of the parties in France, a persuasive argument can be made that the parliamentary system encourages party discipline, since under this system a legislator's infidelity to his party can result in the downfall of his party's government and the possible coming into power of political opponents. No such cataclysmic consequences follow the breach of party ranks by a legislator under a presidential system.

On the other hand, it can be argued that the presidential system encourages a duality of parties. The office of the presidency offers a prize which is both attractive and indivisible; unlike a Cabinet, it cannot be parceled out to coalition partners. The two American parties have often been characterized as loose coalitions held together because no part of the coalition acting alone is strong enough to capture the presidency. Anyone wishing to transform American government into a parliamentary system, therefore, would appear to face a dilemma; he may end up trading duality for discipline; in terms of the goal of government accountability he may be no better off than before.

*Controlling the Executive.* Another dimension of popular control of government relates to the restraints which keep the executive attuned to popular sentiment, and keep it from abusing its power. Here it is difficult to argue the case for either system. For one thing, both the parliamentary and the presidential systems are able to produce strong legislatures which dominate the executive; yet they are also able to produce strong executives which dominate the legislature. Woodrow Wilson's major criticism of American government was that Congress was too powerful; contemporary critics view the executive as too powerful. France can again be cited to illustrate that a parliamentary system can be characterized by a dominant legislature. Contemporary parliamentary government in Britain reflects the very opposite tendency.[3] Furthermore, it is clear that during the twentieth century executive strength has increased relative to legislative strength in both parliamentary democracies and in the American presidential system.

Executive dominance in foreign policy is especially apparent. In the 1960's and early 1970's, American military initiatives were undertaken without congressional sanction; while in 1956 Britain's bold Suez initiative was undertaken not only without the knowledge or approval of the House of Commons, but without the knowledge or approval of most of the Cabinet. Finally, while it once might have been said that in the British Cabinet the Prime Minister is simply "first among equals," today the powers of the Prime Minister have grown to the extent that they have been interpreted by some as comparable to those of an American President. (In Germany, indeed, the primacy of the Chancellor is spelled out in the constitution.)

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[2] An excellent review of this literature will be found in Austin Ranney, *The Doctrine of Responsible Party Government* (Urbana: University of Illinois Press, 1962).

[3] It must be noted, however, that not long ago the British Cabinet was seen as being a committee of the House of Commons, which exercised "absolute control of the Executive." See James Bryce, *Modern Democracies*, vol. 2 (New York: Macmillan, 1921), p. 464.

Having stressed the increase in executive strength, we can also cite examples of continued legislative power on both sides of the Atlantic. Presidents are forever complaining about congressional refusal to accept their recommendations, and presidential vetoes are overridden. On the British side, there are conspicuous examples of a majority-backed government having to take heed of rebellious stirrings within the ranks of its own parliamentary party—an example was the Harold Wilson government's having to withdraw labor union legislation in 1969—and there are no doubt many other examples, more difficult to identify, where Cabinet action has been influenced by the knowledge of what fate might await it if it followed an unpopular course.

The argument, then, can be reduced to the question of which system is inherently more effective for keeping the executive attuned to popular sentiment—a system under which there is a constitutionally autonomous Congress with independent powers such as those over appropriations and war-making; or a system under which a legislature can remove from office at any time an executive which no longer holds its confidence—a system which allows daily confrontation and debate between the government and opposition critics. The effectiveness of the presidential system can be reduced by a President who places broad interpretations on his own constitutional powers—hence the constitutional crisis broadly labeled "Watergate"; the effectiveness of the parliamentary system can be reduced by party discipline—hence the fact that not since before 1900 has a government which began with a Commons majority been overthrown by a vote of nonconfidence. Given the more or less balanced pros and cons for the respective systems' ability to keep the executive under popular control, it is not surprising that Americans and Britons have looked enviously at one another's system and recommended appropriate reforms.

In Britain, the cry has been for a strengthening of parliamentary committees, so that more influence in the policy-making process is shared by the House of Commons. In the United States, the call has been for a system of congressional votes of nonconfidence. Two constitutional amendments introduced into the 93d Congress would establish such a procedure. The impeachment clause of the constitution is ambiguous in its definition of cause. An impeachment involves lengthy proceedings, and in 1974 is being viewed as a traumatic experience for the nation. The proposed amendments would allow Congress, with a two-thirds vote, to remove a President (and call for new elections) when the President is judged to have exceeded his constitutional powers or permitted the executive to trespass upon liberties protected by the constitution.

The pros and cons of a parliamentary system can be illustrated by reference to the Watergate crisis which has confronted Americans in 1973 and 1974. A number of observers have noted that, under a parliamentary system, the Nixon "government" would have fallen at some point in the ascending crisis, most likely in October, 1973, after the firing of Special Prosecutor Archibald Cox. Either there would have been a vote of nonconfidence or, like Neville Chamberlain in 1939, President Nixon simply would have resigned from office. Nor would the President have been able to isolate himself from his critics, going for months at a time without holding a press conference.

Yet a persuasive case can also be made that under a parliamentary system the crisis might never have lasted until October, 1973. Would a special prosecutor have been appointed had it not been for Senate insistence? Would public opinion have turned against Nixon, and would knowledge of the existence of presidential tapes emerged, had it not been for the Senate Select Committee on Presidential Campaign Activities (North Carolina's Democratic Senator Sam Ervin's Watergate committee). Watching the members of that committee perform before the television cameras, and later watching members of the House Judiciary Committee (including even conservative Republicans) insisting on the right of that committee to obtain evidence from the White House, one would perhaps be reminded of the Madisonian formula: "Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place."[4]

*The Public Interest.* A third version of the popular-control-of-government argument is that the parliamentary system, more so than the presidential system, helps prevent narrow interests from prevailing over the interest of the wider community, the so-called "public interest." Without going into the difficult question of how one defines these terms, the pro-parliamentary argument holds that when power is concentrated in a single governing party and Cabinet, no concessions to minority interests will be made which might jeopardize reelection of the party at the next election, such as concessions which would cause increased food prices, cause higher taxes, or which are simply seen as being unfair. With the total package of concessions and compromises being worked out by a single body which can be held responsible, there is said to be less chance that the package will result in these consequences.

By contrast, in the American presidential system, a Congressman need look after only his own constituency, and if he is well situated on a committee having jurisdiction over the interest of his constituency

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[4] *The Federalist*, no. 10.

(e.g., if he was elected from a farm district or a district depending on defense contracts) he can see to it that those interests are benefited regardless of consequences for the larger community. Pork-barrel legislation is also facilitated. Only the office of the presidency is accountable to the entire electorate, and his hands are often tied, especially without the weapon of the item veto, against reckless congressional actions.

At least one political scientist has argued that it is the parliamentary system, not the presidential system, which most effectively combats evil or narrow-based or pork-barrel legislation.[5] The core of this argument is that a British-type parliamentary system forces a party to gain total victory or to face total defeat; there is no equivalent of winning the presidency but not Congress, or vice versa. Hence a British party, in and out of office, is under greater pressure than an American party to reach, or promise to reach, into the public treasury in order to meet the demands of any narrow group, like farmers, who are geographically concentrated and hence in a position to tip the balance of a general election by awarding a parliamentary district to one party over the other.

Regardless of the merits of this analysis of the pressures on the British Cabinet, the charges leveled against the Nixon administration concerning the pressures of the milk producers suggest that an executive who is accountable to the entire electorate is by no means immune to the type of pressures which critics of the presidential system have often seemed to assume are successful only at the congressional level.

*Rights and Liberties.* Another value which is basic to discussions of the parliamentary and the presidential systems is that of individual rights and liberties, especially the rights and liberties of minorities. It was a concern for minority rights that led to the adoption of the presidential system in the first place. James Madison's statement on the subject has become a classic.[6] In order to prevent a tyrannical majority from forming, with the subsequent power to run roughshod over a minority, concentration of power must be avoided; each branch of government must be able "to resist the encroachments of the others."

Has the presidential system realized the Madisonian objective of protecting minorities? In one sense it has; as already indicated, the most persistent criticism of that system has been that it has prevented a concentration of political authority which would permit political majorities from effectively expressing themselves. However, if one looks at the more general question of the protection of individual rights and liberties, it is doubtful that the presidential system has achieved high marks.

First, it has been the amendments added to the constitution, as interpreted and enforced by the Supreme Court, and not the system of checks and balances between the legislature and executive, which have been most responsible for the protection of rights and liberties in the United States. That an American-type bill of rights is not incompatible with a parliamentary system is evidenced by the fact that critics in both Britain and Canada have urged that such a listing of rights, judicially enforceable, should be incorporated into their respective constitutions.

Second, the Madisonian argument assumes that government action constitutes a threat to minority rights; Madison never conceded that government action might be necessary to protect a minority, either from a majority or from another minority. Yet the history of civil rights in the United States demonstrates that such is often the case. Thus to the extent that the system of separation of powers has prevented or delayed strong protection for minorities (e.g., blacks), it has allowed one minority (e.g., Southern whites using the Senate filibuster) to deny the rights of another minority.

Finally, as indicated in a previous section, no strong case can be made for the proposition that a presidential system is more effective than a parliamentary system in protecting individual rights from a tyrannical executive. Many would argue that the very opposite is true.

It has been said that for most people the effectiveness of government is more important than the procedures of government. From this perspective, the arguments which have been presented thus far are of only peripheral interest; more important is the question of whether the parliamentary or the presidential system is better able to provide effective policies and leadership.[7] As in the previous discussion, the case pro and con is dependent on whether one is considering the systems *per se*, or whether one is referring to the systems as they currently operate in Britain and the United States. Also important is the

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[5] J. Roland Pennock, "Agricultural Subsidies in England and the United States," *American Political Science Review*, vol. 56 (September, 1962), pp. 621–633.

[6] An excellent analysis of the Madisonian argument is found in James MacGregor Burns, *The Deadlock of Democracy* (Englewood Cliffs, N.J.: Prentice-Hall, 1963), ch. 1.

[7] For a discussion of the two systems from this perspective see Kenneth N. Waltz, *Foreign Policy and Democratic Politics* (Boston: Little, Brown, 1967).

## PARLIAMENTARY AND PRESIDENTIAL GOVERNMENT

*(Continued from page 267)*

conclusion one has reached on the relative power exercised by the executives in these two systems. The arguments concerning the power of narrowly based pressure groups are also relevant to the question of effective government.

Without repeating the previous discussion, the case for the presidential system can be stated as follows: First, it can be argued that the presidential system provides stable government; Cabinet overthrows and unanticipated elections are unknown. Effective government is therefore more likely. Second, the executive, being secure in office, is able to exercise bold and decisive leadership. Third, the argument can be made that the presidential system recruits more able elected officials. A President need not be recruited from the ranks of long-time legislators who have worked their way through the party ranks. Moreover, a President may reach out into the society at large to recruit the heads of the various government departments. Without the party discipline which a parliamentary system encourages, legislators in a presidential system are also likely to be of a caliber which can contribute constructively to policy making. A final argument is that in a modern industrial society effective government requires strong and effective opposition of the kind a presidential system affords; a small group with concentrated power is not likely to provide effective government policies.[8]

In contrast to these arguments, a British-style system has been defended on the grounds that the executive can usually have its programs enacted with minimum delay and with no chance of deadlock. Second, and more often stressed, is the fact that under this system government policy forms a coherent, integrated whole. There is no likelihood that programs will be enacted only to have the funds cut off, or that funds will be appropriated but not spent, or that complex planning goals will be frustrated because only part of a program can be gotten through the legislature. Finally, it can be argued that politically experienced ministers, aided by an efficient civil service, are best suited for the effective administration of government policies.

Discussions of governing institutions are too often accompanied by two misconceptions. One misconception is that governing arrangements can easily be transferred from one society to another in the expectation that they will continue to work the same way under new conditions. This misconception has often been noted and it seldom appears in political science literature today. Another misconception, however, is equally serious and is more frequent. This is that governing arrangements cannot be changed, since existing institutions simply reflect the operative forces within the society and are not subject to purposeful redesign. It is hoped that neither of these assumptions will be read into any of what has been said in this essay.

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[8] This is the argument of Bernard Crick, *The Reform of Parliament* (Garden City N.Y.: Doubleday, 1965).

# FOREIGN EXPERIENCE AND AMERICAN CONSTITUTIONAL REFORM

By Ferdinand A. Hermens

The great rival of our system of divided powers remains, as in the days of Walter Bagehot, the parliamentary system. It is a true system in the sense that, where applied in accordance with its inner logic, its constituent parts are adjusted to each other as well as to the whole.1/ Of that system, Lord Balfour could say that it is a "cooperative system...a Prime Minister and his cabinet must cooperate or there would be no government."2/

## "Improper Channels of Government."

The dependence of the government on parliament has, however, caused Charles A. Beard3/ to call the parliamentary system a "hair-trigger government." In his words: "The hair-trigger feature of the system lies in this: at any moment, the political gun may go off. If, at any moment, the legislature breaks with the executive, it may force the resignation of the cabinet or a new election." In popular discussions of American constitutional reform, such generalized charges are frequent. They are, more often than not, allowed to carry the day against any positive reference to the parliamentary system.

The facts are different. Where (a) the obvious prepolitical conditions for any type of democratic constitutionalism existed4/ and (b) governments were organized in accordance with what John Jay5/ called "the absolute necessity of system," parliaments have not been "trigger-happy." Governments have enjoyed a good chance of lasting for a period long enough to enact the legislation which they deemed necessary. Where, on the other hand, what Alexander Hamilton called "improper channels of government"6/ were chosen, the results tended to proximate Beard's description.

## France's Third Republic

Until the establishment, in 1958, of the Fifth Republic, the country first on the list of those with "hair-trigger governments" was invariably, and deservedly, France. The Third Republic witnessed, between 1870 and 1940, 106 cabinets; their average duration was a little less than eight months. The record of the Fourth Republic (1946-1958) was to be no better.

The Third (and the Fourth) Republic's deficiencies, however, were not due to parliamentary government but to the failure to bear in mind "the absolute necessity of system." "Improper channels of government" found their way into a constitutional arrangement which emerged from a confused situation. A monarchist majority, seeing its power slip, gave birth to what was considered a temporary framework of government. By default, it became the constitution of an ineffective republic. Walter Bagehot,7/ writing in 1872, when the prestigious Adolphe Thiers was the "Chief of the Executive Power," clearly foresaw what the future would bring:

> ...The present policy of France is not a copy of the whole effective part of the British Constitution, but only a part of it. By our Constitution, nominally the Queen, but really the Prime Minister, has the power of dissolving the Assembly. But M. Thiers has no such power; and therefore, under ordinary circumstances, I believe, the policy would soon become unmanageable. The result would be, as I have tried to explain, that the Assembly would be always changing its Ministry, that having no reason to fear the penalty which that change so often brings in England, they would be ready to make it once a month. Caprice is the characteristic vice of miscellaneous Assemblies, and without some check, their selection would be unceasingly mutable.8/

Bagehot, then, not yet stymied by a type of behaviorism which dominates so much of contemporary political science9/ was still permitted to give his power of systematic analysis full play and tell him that an essential element was missing from the French version of parliamentarism: the government could be overthrown by parliament at any time but could not defend itself by threatening to dissolve parliament and let the people be the final arbiter.

Bagehot also realized that the logic of the system could be temporarily suspended, in this case by a powerful personality. The methodological principle involved is one which has been illustrated by a single example, to which reference may be made once again: on an autumn day, a student sits by his window and sees a tile fall from a neighbor's roof. It reaches the ground speedily and in a straight line. Then a tree drops a leaf; it falls slowly and sideways. Finally, a bird drops a feather, and the wind carries it out of sight. Most of us remember, however, an experiment in our high school physics class which demonstrated that in a vacuum the feather falls just as fast and just as straight as a piece of lead. After that, we were ready to accept Newton's law of gravity: all objects have the tendency to fall the same way.. Compensating factors such as air pressure may modify and for a time even overcompensate for the pull of gravity, but that pull is always there.

Similarly, in the political field, the towering figure of Adolphe Thiers could block the inherent tendency of a French parliament not disciplined by the threat of dissolution to pull down whatever government it faced. Soon the deputies managed to wear down Thiers and make him quit. With most of his successors, the deputies could play like a cat with a mouse.

The Third Republic was further burdened with another "improper channel of government." Elections did not take place under the plurality system, which hands the palm of victory to the candidate with the highest vote. If no on secured an absolute majority in the first ballot, there was a second one in which everyone could participate, even new candidates. Woodrow Wilson10/ had this to say about the effects:

> The result is that multiplication of parties, or rather the multiplication of groups and factions within the larger party lines, from which France naturally suffers overmuch, is directly encouraged. Rival groups are tempted to show their strength on the first ballot in an election, for the purpose of winning a place or exchanging favor for favor in the second. They lose nothing by failing in the first; they may gain concessions or be more regarded another time by showing a little strength, and rivalry is encouraged, instead of consolidation. France cannot afford to foster factions.

By the time Wilson wrote these lines, French political splintering had been occurring for a couple of decades. Wilson might have added that it operated within the framework of a right-left division. One result was that it had its limits. True extremists found the going hard. In a second ballot, everything depended upon the marginal voter, the man in the center who, in France as in other countries, rarely favors extremism. If candidates are truly extreme, they have no partners for the second ballot; they may, as happened to the French Communists in the elections of 1928 and 1932, have to be satisfied with a percentage of seats corresponding to only a fifth of their percentage of the votes. This can change, as in the Popular Front elections of 1936, when the Communists arranged for mutual support with the moderate parties of the Left for the second ballot and were willing, for the time being, to soften their extremism. Even then they secured fewer seats than corresponded to the percentage of their votes (72 instead of 93). The moderate parties, on their part, secured a much higher percentage of the seats than of the votes11/ and, as a result, they commanded a parliamentary majority without the Communists. On the other side of the political spectrum, the various "Leagues" of the Right suffered a disastrous defeat.12/

Lastly, if France had a multiple rather than a two-party system, it was a multiplicity in which the parties were related to each other. As a rule, the several groups of the Right and of the Left united behind one candidate for the second ballot. Agreement on men meant, to some extent, also an agreement on "measures." The result implied that, if a combination of parties had won an election, it was expected to form a common cabinet.

Had these cabinets disposed of an untrammeled right of parliamentary dissolution they might, according to one major observer,13/ have lasted the entire term of a parliament, as is the custom under a regular two-party system. Consequently, expert opinion tended to the view that, of the two major "improper channels" of government, the absence of a workable right of dissolution was the more important one.

It might be mentioned in passing that some French writers pointed to a third "improper channel" of government: the growing power of the Senate which was always a coequal partner in legislation and which, in the end, successfully asserted the right to overthrow governments. Indirectly elected, it could, however, hardly have attained such a status had it been confronted by a government based on a Chamber with a clear cut majority, disciplined by the right of dissolution.

French experience was also to demonstrate that, once a country's political life has been directed into "improper channels," the result is all but irreversible. Vested interests cluster around faulty institutions; when a change is proposed, they will rise to a man to oppose it. Their strength is enhanced by intellectual confusion: while the Framers of the American Constitution were firmly convinced that freedom cannot exist without the proper degree of authority, such views will, in a situation comparable to that of the Third Republic, be termed "authoritarian" or, in a later day, "fascist." The combination of vested interests and intellectual confusion proved too much for the various attempts14/ to make the Third Republic equal to its tasks.

One last chance seemed, however, to offer itself when, in 1934, general indignation about parliamentary paralysis, and the scandals for which it provided a fertile ground, reached explosive proportions. A former President of the Republic, Gaston Doumergue, was recalled to become Prime Minister and bring about effective change. He failed for a reason which has frustrated more than one such attempt at reform: it seemed that he must first concentrate on the most urgent task in hand, putting the country's finances in order and constitutional reform could wait. The time lost proved to be all the articulators of the vested interests and of intellectual confusion needed to take the stem out of the reform movement.15/ Soon the usual partisan struggle between the Right and Left reasserted itself, and did the rest. As a result, the Third Republic was too week to handle the burdens thrust upon it by the rise of the Nazi dictatorship.

## Europe from Bad to Worse: American Experience Ignored

The end of the First World War saw the collapse of the empires of Germany, Austria-Hungary, Russia, and Turkey. New republics arose east of what became the border of Soviet-Russian, namely, the three Baltic States, Poland, the successor states to Austria-Hungary: Czechoslovakia, rump Austria, an enlarged Romania, and enlarged Serbia under the name of Jugoslavia (the last two retaining their monarchs) and, after an interval, the new Turkey. All of them had a chance to establish their democracies on time-tested foundations, and all of them missed it. The type of constitution which they adopted was what Professor Boris Mirkine-Guetzevich has termed "rationalized parliamentarism."16/

This type of government was wrong in its basic philosphy and clumsy in the choice of means. It is interesting to note that, while parliamentary government has requirements of its own, the more basic mistakes to which we refer concern the general needs of democracy, whatever its structure. What should have been done and what should have been avoided could, in fact, have been learned from the solid part of the American political system17/ both from the thought which inspired it and from the means applied to implement it. It will, therefore, be useful to consider, even if briefly, the principal problems involved. This will help us to see to which factors our Constitution owes its preservation over close to two centuries. It will also illustrate the effectiveness of the structural devices which, if chosen in the countries concerned, would have been of a potentially decisive help to them in overcoming the troubles which the divisiveness of their people and their parties were to cause.

So far as the basic ingredients of sound political thought are concerned, reference has already been made to the fact that, when the institutions of the Third Republic began to operate to the detriment of true political authority, an intellectual current developed which elevated a deficiency into a virtue. A similar current developed in postwar Europe where it seemed vital to replace the excessive executive power characteristic of the old autocracies with an executive so weak that it could not do its job. It was overlooked that the Emperors, Kings, and Princes of the past were gone, and that the people would, henceforth, be confronted with leaders chosen for limited periods and exercising their power under clearly defined conditions. Max Weber warned in vain that there was a difference between "freedom within the state and "freedom from the state." Generations earlier, we find in The Federalist a repeated emphasis on what Alexander Hamilton in the New York Ratifying Convention stated in these words: "Power must be granted, or civil society cannot exist." The Madison of those years was, in regard to such general problems, a close ally of Hamilton, in thought as well as in practice. Professor Lynton K. Caldwell18/ has summarized Hamilton's views in the simple sentence: "Power was best controlled, not by rigid limitations, but by the provision of channels for its responsible operation."

Equally important: the thought of America's Framers strongly implies that a constitution is not a passive derivative of social forces. In this respect, the younger Charles A. Beard19/ completely misread the Framers, in particular The Federalist No. 10. In this essay, Madison was as keenly aware of social and economic reality and all the social multiplicity and antagonisms which it produces. Walter Lippmann has reminded us in one of his most effective columns20/ that the very first sentence of No. 10 puts Madison squarely on the side of those who, following a tradition of two thousand years, have cast the political structure into an active role: "Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction." The most threatening dangers to democratic government are, therefore, not passively accepted: it is the task of properly devised institutions to shape that government in such a way as to enable it "to break and control" its enemies.

The meaning of Madison's vital sentence has, to be sure, been obscured by the fact that its author, like most others in his day, was not yet aware of the positive tasks of political parties and of interest groups. Clearly, however, the characteristic of "faction" which Madison was most anxious to "break and control" was "violence;" he uses that word repeatedly. Violence had, indeed, been the mark of all of those groups which had destroyed republican government in antiquity and during the Middle Ages, as it was to be the mark of those who destroyed democracy in generations to come.

Madison wanted to "break and control the violence of faction" in a manner which did not interfere with liberty. Liberty "is to faction what air is to fire," an "element without which it instantly expires." Madison concludes "that the *causes* of faction cannot be removed, and that relief is only to be sought in the means of controlling its *effects*." This is to be done with the instruments proper to "a well-constructed Union." The full significance of this statement is rarely seen: it means no less than that we should put all of the factors which threaten democracy from within (be they of an economic, ideological, or whatever other origin) on one side, and the instrumentalities of the democratic poliical process on the other side. These instruments are likely to control the former if given a chance.

What is the best way to "break and control the violence of faction"? Madison's answer begins with these words:

> If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution.

Madison then discussed the effect which the representative principle in itself can have on giving reason and moderation a chance to prevail; these specific issues cannot be discussed on this occasion.21/ Madison then returned to majority rule and added that, while in some local areas candidates presented by "factions" may be elected, they faced the further safeguards created by the large extent of the country as the particular processes on which the cohesion of a faction depended could not be easily extended over a large territory. It would then be "less probable that a majority of the whole will have a common motive to invade the rights of other citizens. What Madison had in mind resembles what, in our day, John Kenneth Galbraith termed "countervailing powers."

Madison's reasoning came to be supplemented by Lincoln's simple words: "You can fool some of the people all of the time, you can fool all of the people some of the time, but you cannot fool all of the people all of the time."

American experience has indeed proven that it is difficult to elect true extremists in more than a limited number of congressional districts and that, in the national Congress, they could never become more than a handful. Similarly, when our parties gather for their national conventions, they keep a watchful eye on candidates with a "factional" bend. Thus the Klan of the 1920's, powerful as it was, could never secure the presidential nomination for one of its own, and by 1928 it could not even prevent the selection of Alfred E. Smith, who was anathema to its members. Our political divisions have never reached such proportions in later years, but when, in 1974, Barry Goldwater, and in 1972, George McGovern, both regarded by a significant part of the electorate as "extremists," were nominated, the swing against their parties was such that caution became a primary ingredient of the choice made by national conventions.

As American history was also to demonstrate, the majority does not simply "block" the rise of factions. There is a carrot as well as a stick: actual and potential leaders of "factional" groups can try their luck within the large and more successful parties. Not a few of them have eventually made their contributions to moderation and responsibility in this way.

Lastly, as both Jefferson and Lincoln pointed out in their first inaugural addresses (the most overlooked contributions to the catalogue of American classics), majority rule is not only vital but also contains a high potential for generating a political consensus. Jefferson presided over the first great political turnover in this country, and demonstrated that there can be a peaceful alternation of parties in power. The undecided voter in the country's political center decides who is to have a majority, and he forces both of the major contestants to accept tenets with which their fellow citizens can live.

To take a brief look at American political history: what James Sundquist was to call "The Alignment and Realignment of Parties"22/ began with the elections to the first Congress. The Anti-Federalists had secured about half, and some say more than half, of the votes cast for the Ratifying Conventions. The brilliant exposures of the merits of the new Constitution, highlighted by The Federalist papers, and the effective arguments presented in the various Ratifying Conventions, won the day. But the Anti-Federalists had not disarmed, and in the crucial state of Virginia they were led by the then "omnipotent" Governor Patrick Henry. The state legislature picked the two Senators of his choice, but in the House districts the combination of popular election and of decision by majority made it possible to turn tables on him: The Anti-Federalists took only three of the state's 10 seats. James Madison, though forced into a hard battle, was among the victors. He had, however, to pay tribute to the fact that government by majority is indeed government by persuasion.23/ In Philadelphia, he had opposed the demand for a separate Bill of Rights, but his Virginia friends soon convinced him that this was one Anti-Federalist demand which he had better accept, and he did so gracefully. His opponent, incidentally, was James Monroe who soon rallied to the major policies of the Federalists, eventually becoming Madison's successor as President.

The Anti-Federalists can, of course, not be regarded as a "faction" in Madison's sense; they did not sponsor organized violence.24/ This is different with the Anti-Masonic Party, the Know Nothings, and the Klan of both the post-Civil War and post-World War I period. They all, however, soon realized that the road to power led through electoral participation. They might do well enough in individual congressional districts and in state elections, but on the overall national level they had to compromise their principles.

The first major representative of these groups, the Anti-Masons, after having spread fear over large areas, adopted most of the tenets of the -- moderate -- National Republicans as soon as they entered into electoral contests. In their National Convention of 1832 (the first one ever held by any party), they selected William Wirt as their standard-bearer. Wirt, nationally known as a former Attorney General under Presidents James Monroe and John Quincy Adams, was expected to unite the opposition to Jackson. But the candidate was also a Mason, and it soon developed that, in order to become strong enough for victory, the party had destroyed its credibility. When the election turned into a Waterloo, the party simply disintegrated. The rank and file found it easy to take their places within the moderate groups struggling for the political realignment which was then occurring. Once again, the combination of stick and carrot had done the job.

As mentioned above, the Klan of the 1920's did no better than the Anti-Masons. Both had also demonstrated that it does a defeated faction little good if, to quote again Madison's analysis of The Federalist No. 10, it is able for a while to "clog the administration," and to "convulse society," since "it will be unable to execute and mask its violence under the forms of the Constitution." That was to be different with the Fascists, the Nazis, and similar groups of later generations. They did not have to contend with majority rule in small (or large) constituencies. As will be discussed below, proportional representation opened the doors of their countries' parliament to them on easy terms, allowing them to undermine their nations' political institutions from within.

The difference was to be particularly visible during the world economic crisis. In the United States, the decline of production and prices, and the rise of unemployment closely paralleled what happened in Weimar Germany; the respective percentage figures for the two countries can be substituted one for the other without causing a significant divergence from the facts. The people in Germany did suffer from the effects of the lost war but then there was a comprehensive system of social security which even in those difficult days provided a minimum of protection which many an American needed and did not have. The perceived and the real extremists in the United States might, therefore, have had as much of a field day as did their German counterparts. In the presidential elections of 1932, the Socialists did manage to increase their votes from 268,000 (in 1928) to 882,000, and the Communists from 21,000 to 103,000. But what did that matter by comparison with the Democratic increase from 15 million to 22.8 million, corresponding to a Republican decline from 21.4 to 15.8 million? Weimar's "improper channels" of government, which enabled Nazis and Communists to grow by leaps and bounds, had been avoided. The American voter was simply asked whom he wanted for his President. Hoover and Roosevelt were the only ones to have a chance, so he made his choice between them; he did not act as if he was expressing preferences in a ideological beauty contest as the German voters had to do.

The chances for radicals to fatten up on the protest vote caused by the Depression was not to end in 1932. For the reasons mentioned in a different context, American recovery was sluggish and unemployment remained high. New protest movements arose, led by Huey Long, the Rev. Gerald K. Smith, and the Rev. Charles Coughlin. After Long's death, Coughlin tried to unite the three groups. By itself, Coughlin's National Union for Social Justice claimed 5 million votes and it became the center of the one major attempt made to gain power through the electoral process, namely, the candidacy of Congressman William Lemke in the presidential elections of 1936. During the campaign, Coughlin told an audience assembled in the Cleveland stadium that he would end his (phenomenally successful) radio talks if he did not "deliver 9 million votes for Lemke." Actually Lemke secured only 900,0000 of the 45 million votes cast. Americans just did not want to "throw their votes away." These elections also provided a rare quantitative comparison between the chances of a candidate with a chance to win and one whose defeat could be taken for granted: on the same day that the people gave Lemke, in his native state of North Dakota, 36,708 votes in the contest for the presidency, they accorded him 115,913 for reelection to Congress.

Thus, during the Depression, groups that might have deeply disrupted the forming of a new national consensus never got to first base. They could, and did, cause trouble, as did Father Coughlin when he unleased a flood of telegrams on Washington which, he claimed (and others believed) were decisive in preventing the Senate from accepting American adhesion to the World Court. But they could never disrupt the organs of the national government from within; there never was that paralysis of power which preceded the victory of both Mussolini and Hitler.

The events connected with the postwar racial crisis, with Vietnam, and with Watergate must be treated even more briefly. Only the racial crisis led to significant attempts to gain power through the electoral process. In 1948, the then South Carolina Governor Strom Thurmond led a third party movement against the Democratic Party's presidential candidate Harry Truman. His defeat was almost as resounding as that of Congressman Lemke's in 1963. Thurmond, more of a national figure than Lemke, later entered the Senate. He came to modify his views in the course of time, and, when he ran for reelection in 1980, his old segregationist beliefs had moderated to such an extent that he could openly court black votes, of which he received a significant number.

The example of Alabama's Governor George Wallace is even more striking. In his first inaugural address, he had vowed "segregation now and forever." When in 1982 he decided to run once more for his old office, he declared that he had changed with the times. He managed to secure enough black votes to win the Democratic primary and was officially, if indirectly, supported by black organizations in the final elections, when he won. He appointed two blacks to his cabinet.

American history, then, demonstrates that violent dissent can be overcome by democratic means: majorities are enabled to beat it down where it is disruptive, but their ranks are open to those who are willing to enter them and work together with others for peaceful solutions. There is always a constructive interplay between partisan dissent and the tendency toward national consensus.

Madison's warnings meant little to those Europeans who drafted the constitutions adopted after the two world wars. They might have reflected that there was no lack of combustible material in the world in which they lived; they could easily have concluded that there was every need to "break and control the violence of faction." The intellectual atmosphere of their days, however, favored the reduction of all political events to social divisions. Eventually, Leopold Schwarzschild,25/ one of the most intelligent writers of the Left in Weimar Germany, was to complain that the vast majority of his country's intellectuals thought in the terms of Marx's "historic materialism," which, he said, had been proven by events, in particular the rise of Fascism and Nazism, to be "historical mysticism."

Actually, so far as the system of voting is concerned, there had been a stringent warning two generations earlier. When Thomas Hare developed the single-transferable vote of P.R. Walter Bagehot analyzed its inherent tendencies26/ before it had even been used, and concluded:

> ...the mass of a Parliament ought to be men of moderate sentiments, or they will elect an immoderate ministry, and enact violent laws. But upon the plan suggested, the House would be made up of party politicians selected by a party committee, chained to that committee and pledged to party violence, and of characteristic, and therefore immoderate representatives, for every "ism" in all

> England. Instead of a deliberate assembly of moderate and judicious men, we should have a various compound of all sorts of violence.27/

For Bagehot, then, parliamentary government and P.R. were incompatible. That conclusion must be modified in the same way in which Bagehot's prediction of the troubles of the Third Republic had to be modified: the tendencies inherent in any part of a constitutional structure can be weakened by countervailing forces in the same way in the fall of the leaf or the feather can be affected by air and wind. In the case of P.R., the possible modifying factors are of two kinds: first, the system itself can be used in a diluted form. Second, economic, ethnic, and other social forces can either strengthen or weaken the effects of P.R.

Thomas Hare wanted proportionality in its "pure form." All of England was to form one constituency. The voter would be given a "freedom of choice, not only of the two or three (candidates presenting themselves, under majority voting, in a single-member constituency) but of the candidates for all the other constituencies of the kingdom." They might number "two or three thousand." Hare was frank about the consequences: "Many more candidates will be everywhere put in nomination." He concluded: "Minorities...(will, under the single-transferable vote) far exceed any number of minorities now existing, by the operation of numberless affinities and compulsions, which, in a state of liberation, will dissolve the present majorities."28/

Hare's followers realized that so much consistency would not do. Who could handle a ballot with two or three thousand candidates? In 1937, the voters of Brooklyn, New York, had serious trouble with a ballot four feet long, but it had to accommodate only 99 candidates. Therefore, in most cases where the single-transferable vote was applied, the size of the contituencies was limited and with it the number of candidates. The price, of course, was a dilution of the essence of P.R., which is to establish proportionality between votes casts and seats obtained. When, for example, in Ireland, Eamon de Valera could not abolish P.R., as he would have liked to do, he instituted small constituencies. A number of them contained only three seats, two of which would go to the party which scored more than half of the total number of votes.29/ Such a system assumes some of the characteristics of majority voting. Some, but not all. Ireland witnessed, in 1981 and 1982, two successive elections in which half a dozen independents turned the scales between the major rivals. Every independent made his vote count as much as he could, and two governments fell after less than a year in office. A third election then made possible a coalition of Fine Gael and Labour which, however, had to approach the troubles of Ireland's particularly deep recessions with highly divided counsels.

The opposite of the Hare system is the list system. In its simplest form, the seats are divided in proportion to the votes received by the party lists, with candidates elected in the order of their listing. This arrangement has obvious disadvantages but it reflects a certain logic. The essence of P.R. lies in impersonal numbers, the desired identity of the percentages of the votes and of the seat received. It is no accident that, as two French jurists30/ reported regretfully, the originators of the leading P.R. systems were mathematicians. Lists can, however, be loosened by permitting the voters either to modify somewhat the order of the candidates, or by leaving it to them entirely to indicate the victorious candidates with the help of preferential votes.

Our discussion of the practical results of P.R. must be brief, and it is complicated by the fact that, as this writer has emphasized for decades,31/ social causation is multiple. To trace it adequately would, in addition to the analysis of the fundamental concepts, require a book length examination of the concrete facts for every country.32/

## Pre-Fascist Italy

The following remarks will concentrate on the cases in which leading statesmen vigorously criticized P.R. before it was adopted, and the results of its application confirmed their views within short order. The first country is Italy, which is so important because of the encouragement which Fascism had on the development of right-wing extremism in several European countries. Mussolini demonstrated rather quickly that democracies could be overthrown and thus lent credibility to others with similar plans. He had a particularly powerful influence on Germany. Most of Germany's right of center leaders (and millions of their followers) who helped Hitler get to power expected no more than a new version of Mussolini's rule. Hitler studied Mussolini's rise carefully. His title "Der Fuehrer" is a literal translation of "Il Duce," and the "brown shirts" were a copy-cat version of Italy's "black shirts." Furthermore, the way in which Hitler got himself appointed Chancellor was a studied imitation of the way in which Mussolini became Prime Minister: the Nazis, like the Fascists before them, accepted a cabinet in which they had only a small minority of the seats -- enough, however, to initiate, in due course, that reign of terror which permitted them to subdue their right-wing allies and suppress the rest.

Before Italy adopted P.R. in 1919, there was a vigorous debate in the Chamber of Deputies. Thus Sidney Sonnino33/ concluded:

> With the tempestuous agitation that has arisen during the last five years still troubling us, and with a moral fever pervading the world and bound to continue for at least several months more -- now is surely not the time to adopt new methods for the election of Parliament and thus give fresh strength to those elements in our social and political structure which make for disintegration...

Sonnino added: "Why base our every hope, our confidence in the future, upon those things solely which divide us, rather than on those on which we agree?"34/

The deputy Alessio35/ was not less forceful:

> What...is the function of P.R.? It is to create (I use the words of a pamphleteer) an elected assembly in which the forces of the various parties exist in the same proportion in which they exist in the Nation. But that, Gentlemen, is absurd. Parliament is confused with the Nation. The Nation, Gentlemen, has continuity of existence, permanency...
>
> Parliament has a duration of five years. In this short time, it must carry out a program, strengthen a government, or replace it. Its action and its purpose cannot be realized without a majority.
>
> ...The application of this system under present conditions would provoke a very bad functioning of the Chamber, would make it impossible to form a lasting cabinet, and would in the long run bring about the paralysis of public life.

Sonnino and Alessio both argued the extreme case: they protested against a system of voting which established an almost hundred percent proportionality. This was done in regard to a people which (then more than now) represented a temperament particularly averse to compromise, and they faced a situation which the historian Gaetano Salvemini36/ characterized as one of "postwar neurasthenia." Salvemini added, however, that by 1922 this neurasthenia had subsided, only to be followed by "parliamentary paralysis."

Paralysis is, of course, exactly what Alessio and Sonnino had predicted. Two P.R. elections, held in 1919 and in 1921, sufficed to bring it about. It was still necessary for various other factors to intervene before Mussolini's "March on Rome" could cause King Victor Emmanuel (in some respects so similar to dottering President von Hindenburg in Germany) to appoint him as Prime Minister. But Italy had permitted "improper channels" of government to shape the articulation of its political will, and thereby given hostages to fortune. In such cases, pure accident can combine with faulty judgment to produce irreversible results.

As to what happened, all space permits us to do on this occasion37/ is to quote what Lord Curzon38/ said, evidently just before Mussolini's victory:

> During the last three or four years, I have been confronted with the phenomenon of a series of unstable Italian governments, seldom

> lasting for more than a few months, and depriving their representatives at Allied Conferences of that power which derives from stability of institutions. I think I have put the same question to every succeeding Italian Minister, be it Prime Minister or Foreign Minister, with whom I happened to be associated, and on every occasion I have had the same reply: "The weakness of our institutions and the instability of our governments is due to Proportional Representation and Proportional Representation alone."

If challenged, Lord Curzon's informants would hardly have denied that more factors than P.R. were involved in the fatal weakness of Italy's parliamentary government. What they meant, they could have expressed in Madisonian terms: a variety of causes spawned Fascism and Italy's other "factions." The one potent factor apt to "break and control the violence of faction," majority rule, had, however, been replaced by P.R. What could still be done to save freedom was hampered by the rivalries between the moderate parties, which were not tied together by the need to present common candidates, and by the blunders of people who, beginning with Prime Minister Facta, should never have held the positions they did. Basically, the warnings of men like Sonnino and Alessio were inspired by the feeling that what actually did happen was somehow "programmed" when P.R. was adopted.

The collapse of democracy in Italy was to be followed by its weakening in all countries with P.R. and its eventual demise in some. The most important case is, of course, that of Germany. There P.R. had been introduced, in 1918 , through a decree of the Council of People's Commissars which had assumed control when the empire collapsed. Its members were Socialists and, since P.R. had been demanded in their party's famed Erfurt program, its adoption was automatic. A few months later, the National Assembly made P.R. a part of the consitution. Friedrich Naumann, the leader of the (Liberal) Democratic Party, was its principal opponent. He emphasized the fundamental clash between the requirements of the parliamentary system and of P.R. In a letter to one of his followers, he raised the issue even more sharply:39/

> I do not believe that we shall get to a satisfactory solution of the problem of forming a majority, but I feel that we are creating a condition, which can be remedied only by a later coup d'état. However, I know well that I am alone in my far-reaching pessimism on this question. Since one does not want to endow the President with strong governmental rights of his own, one ought to take care that there is a natural majority in Parliament. That is what is not being done

> and what, so far as I am able to see, is not accomplished by the way chosen. Therefore, the new Constitution lacks a state-forming organ.

Naumann could not have been more outspoken. He disregarded the complaints of his followers that his party would suffer from majority voting; according to his disciple and biographer, Theodor Heuss, those were for him of "second-rank" considerations. Heuss adds:

> It need not be demonstrated how clearly he (Naumann) foresaw future developments; the searching for a majority was bound to shift the power of decision, and the responsibility, to the small groups which, formed on an economic, denominational, or geographic basis, were still just "needed" and therewith, if one wants to accept a political "marginal utility" or "marginal cost" theory, determined the parliamentary "price formation."40/

Naumann's warnings, seconded by Max Weber, had no effect, and German political history was started on a course at the end of which the Nazis were able to seize power. Other factors, omissions as well as commissions, played their part in the rise of Hitler; the author has discussed them repeatedly and in great detail. Thus, as mentioned above, tendencies arising from the constitutional structure can be offset, even if only for a time, by other factors. There is first the possibility of mitigating the effects of P.R. by watering down the system, as happened in the electoral law governing the election of the Constituent Assembly in 1919. There were regional constituencies and the distribution of the seats took place according to the d'Hondt system which, unless it is applied for a country as a whole, favors large parties. Had it been continued, it could have reduced Hitler's chances significantly. But the P.R. doctrinaires wanted full proportionality. They got it in the election law of 1920 which allocated a seat for every 60,000 votes, and used regional and national lists for the utilization of remnants. There was one exception on which the then Minister of the Interior, Erich Koch-Weser, insisted, after a delegation of midwives had threatened him with the formation of a party of their own: on the national list a party could obtain only as many seats as it had received in the provincial and regional units. The provision did not, however, block many others beside the midwives. When splintering reached a high point in 1928, some advocated more serious restrictions on the proportionality of the election law, only to suffer defeat from the usual combination of vested interests and intellectual confusion.

There was, however, a period of consolidation. The inflation came to an end. The Dawes Plan seemed, for a time, to put the payment of reparations on an acceptable level, and the treaties of Locarno and Thoiry brought Germany back into the comity of nations. Nazi strength declined from a pre-Depression high of 6.5 percent in May 1924 to 2.6 percent in 1928.

The overall splintering was, however, such that, in order to get any majority at all, a government of five parties had to be formed which stumbled from one crisis to another. Under majority voting, matters would have been different. Johannes Schauff41/ found that, if the country were divided into 400 single member constituencies, the board would have been swept clean of the more troublesome of the smaller parties, including the Nazis.42/ The Social Democrats might have had a clear majority of their own.

In any event, Germany's economic recovery, limited as it was, did provide for a measure of political stabilization. Compensation for the effects of P.R. was, however, limited. Chancellor Hermann Mueller found it hard to keep his five-party coalition together. He lost an irreplaceable helper when his Foreign Minister, Gustav Stresemann, died -- he suffered a heart attack on the evening of another day which he had spent trying to keep his "People's Party" within the coalition. In the end, Mueller's own party torpedoed the cabinet when it refused to accept an increase of the social security tax by one-half of one percent, made necessary by rising unemployment. When, in our day, proponents of P.R. place their hopes on the accommodation which they feel can be reached by the partners of a P.R. coalition, they overlook that, in times of economic stress, differences between parties tend to become acrimonious, and the breaking point is never far off.

Some of those who were aware of the fissiparous tendencies of P.R., in particular Max Weber, had insisted on a strong President, popularly elected, who could provide for a measure of stability.43/ The 1930's were to reveal the questionable aspects of such an arrangement: certainly, when von Hindenburg appointed Heinrich Bruening as Chancellor and promised him that, if necessary, he would be authorized to govern by decree, many accepted this as reasonable under the circumstances: if Max Weber had been living he might have agreed with this evaluation. But then there came the appointment of the adventurous von Papen and of General von Schleicher who soon discovered that he could not ban the demons which he had summoned, and finally of Hitler.

Meanwhile, everything depended on the elections called for September 14, 1930. Until then, Bruening had been fighting his major battles against the Social Democrats who had voted against the measures through which he hoped to stem the crisis. Soon, however, the Nazis, until then hardly known outside certain areas, were waging a turbulent campaign all over the country, blaming the government for the high interest which the farmers had to pay and for unemployment and bankruptcies in the cities.44/ The percentage of the votes cast for them increased from the 2.6 percent in 1928 to 18.2 percent, and the number of their deputies from 12 to 107. The Communists grew from 10.6 percent to 13.1 percent of the votes and from 54 to 77 seats.

In the United States, even such percentages of the votes would have meant little. In 1924, the elder LaFollete, so very much more respectable than Hitler, won 16.2 percent of the vote though, unlike the Nazis, he could not get his ticket on the ballot in all of the states. He had to be satisfied with 2.4 percent of the electors and, on the day after the election, his coalition was dead; there was not even a chance to consolidate it into a regular party. Hitler's candidates were listed everywhere, and they got a full percentage of the seats. The party had acquired a momentum which was to carry it to power.

The Nazis did not secure an absolute majority of the votes, however, in a single one of the 400 constituencies of equal size into which the territory of the Reich had been divided.45/ For a party with few friends, and few presentable candidates, that would have been fatal. In Germany, majority voting would presumably, as it did until 1918, have taken place under a run-off system where the moderate had a chance to unite against both the Nazis and the Communists. A detailed study of the possible combination leaves no doubt that under any kind of majority voting the republican parties would have had an ample majority, capable of governing for the next four years, during which the worst of the Depression would have been overcome.46/

Space does not permit the discussion of P.R. in other countries. Thus, democratic government did survive in the Scandinavian and in the Benelux nations. However, there had everywhere been, in the words of the German jurist Rudolf Smend, a "shift in the constitutional order through proportional representation."47/ Coalitions of minority parties decided instead of parliament as a whole. Furthermore, P.R. had, by eliminating the kind of struggle which guarantees vitality, devitalized the democratic process, making everything dependent upon a multiplicity of parties and their bargaining; even then, it might take months after an election to form a new government. Still, democracy did survive after a fashion in some of these countries48/ and in Sweden there even was definite improvement after, in 1932, the Socialists began to be the leading party in government. This improvement is relative in the sense that only some of the more serious defects which P.R. had exhibited in the 1920's were overcome. There was reason to assume that majority voting would have done better.

Thus, during the inter-war years, the story of P.R. was one of only intermitently relieved gloom. Matters were to improve somewhat after 1945. On the one hand, the reduction of political splintering by the dilution of P.R. became more frequent; the German 5 percent clause is the best known example. On the other hand, there was an unprecedented boom, interrupted only by comparatively brief and mild "recessions." In one generation, the world's production more than doubled. Prosperity, as it prevailed until 1973, did as much to nurture political moderation as the severe Depression of the 1930's had added fuel to the flames of disruption.

## France's Fourth Republic

Even so, the new P.R. experience was by no means uniform. To begin with, there was France, forever inclined to go her own way, adding to her other attractions that of a perpetually operating laboratory of constitutional experimentation. French postwar history began with the adoption of P.R. as well as of a constitution embodying just about all of the possible devices of "rationalized parliamentarism," apparently intending to demonstrate that such a combination is capable of engendering problems even in the best of times. There had been ample warnings during the dying days of the Third Republic as to what might be expected from P.R.49/ There was a full debate in the Chamber, one of the best in the history of the world's parliamentary discussions of the subject. During the war, the Philospher Jacques Maritain, whom the Christian Democrats of France (and other Latin countries) are, to this day, proud to list as their intellectual mentor, had expressed himself in a few, but pregnant sentences:50/

> In order to eliminate, in addition, every attempt to introduce the "Trojan horse" of proportional representation into the democratic structure, let us note that just as the common good is not a simple sum of individual goods, so the common will is not a simple sum of individual wills. Universal suffrage does not have the aim to represent simply atomic wills and opinions, but to give form and expression, accordinng to their respective importance, to the common currents of opinion and of will which exist in the nation.

Lastly, there was the use of the old type of majority voting in the municipal and provincial ("cantonal") elections of 1945 which by itself should have clinched the issue against P.R. In the provincial elections, the Socialists led with a total of 811 seats, the Radicals (actually, centrist Liberals) followed with 607, the Communists had 328, and the Christian Democratic MRP (Popular Republican Movement) 230, the rest going to independents and smaller parties. Léon Blum could write without contradiction: "We have the wind in the sails."51/ Blum and his friends felt that, as soon as elections to the Constituent Assembly had been held, they would lead their country just as the Labour Party under Clement Attlee was then leading England.

The difference was that the English Labour leaders had rejected P.R., fully aware of it simplications52/ when the Liberals tried to force it on them. The French Socialists were never quite free from the dogmatism of the Second International, which had endorsed P.R., even when Leon Blum tried to break away from it. In 1945, they just submerged themselves in the P.R. wave which swept the country. That system's strongest proponents were the Communists53/ but the Christian Democrats, always opportunistic in constitutional matters, were not far behind.54/

General de Gaulle hesitated, but in the end signed a law which he hoped would avoid the worst: P.R. was to be applied in 102 constituencies, electing on an average six deputies, each with no regional or national utilization of surpluses. This meant that a party with less than one-seventh of the votes secured no seat.

The results soon dampened the hope that this diluted form of P.R. would save France from the major effects of that system. The three "mass parties," Communists, Socialists, and Christian Democrats, with approximately equal strength, obtained a somewhat higher percentage of seats than of votes. The smaller parties suffered, and they included the "radicals," then a truly centrist party. The leading trio lost no time demonstrating that keeping the number of parties down does little good when none of them has, or even expects, a majority, and no two of them can find the way to a reasonable degree of cooperation. General de Gaulle, who had been heading the provisional government and expected to stay on, resigned as soon as he had digested the election results. There were two cabinets in 1946, while the new constitution was under discussion, and 17 more from January 1947 to April 1958, when the Fourth Republic expired.

The constitution of 1946 followed, in spite of minor corrections brought about by the Christian Democrats, the pattern of "rationalized parliamentarism" in the form in which it was presented by the Communists.55/ All elections were to be held under P.R., and the Executive was to be weak, deprived, in particular, of an effective right of dissolution.

The French soon realized that, with this kind of political structure, they could marshall their potential no more than they had been able to do during so much of the Third Republic. The realization came fast and vigorously and soon expressed itself in the explosive success of General de Gaulle's "Rally of the French People." By the time new elections to the National Assembly were due (1951), there was no doubt that, between the Gaullists at the Right and the Communists at the Left, the moderate parties to which Leon Blum had tried to administer a shot in the arm by calling them the "Third Force" could not have secured a majority under the existing election law. So it was arranged that, wherever a party or a group of allied parties (an apparentement) secured an absolute majority in a constituency, it obtained all of the seats; these were, in case of a coalition, divided between the participants according to P.R.

This law discourged the voters from supporting either the Gaullists or the Communists since neither had a chance to enter a promising coalition. Still, the two of them together had enough votes to have given them a parliamentary majority had the law not been changed.56/ The apparentements provided the parties of the "Third Force" with enough of a breathing spell to make possible the governments of Antoine Pinay and of Pierre Mendès-France, the former being able to slow down the inflation and the latter to extricate France from the Indochinese war. Both premiers were aware of the need to reform the election law and to strengthen the right of dissolution. Once again, the vested interests gave battle: changes in the election law proved impossible, and the reform which Mendes-France tried in order to obtain a workable right of dissolution and to alter other parts of the constitution became a reformette (December 7, 1954), limited to a few minor, if beneficial, changes.

In the elections of 1956, the parties of the "Third Force" found it impossible to conclude enough apparentements, and the results were about what they would have been under the law of 1946. Incoherence and semiparalysis were, once again, the characteristic of governments. When, in May of 1958, the parachutists of General Massu stood ready to drop on Paris and take the law into their own hands, the Republicans were glad to hand the power over to General de Gaulle, trusting him to establish a new republic.

## The Fifth Republic

The General kept his promise, and a constitution was adopted which was, in all decisive aspects, the opposite of its predecessor. It was still comparatively long and detailed, but its provisions aimed consistently at establishing and securing a vigorous executive. The starting point was, as it had been for Debre in 1944, the parliamentary system. The two decisive steps to establish it in its "classic" shape were taken: majority voting was adopted (though still with two ballots) and an untrammeled right of dissolution was introduced -- so untrammeled, in fact, that it was given to the President of the Republic without the requirement of countersignature. Michel Debre and his friends felt, however, that, given the bad habits characteristic of France's parliamentary past, the parliament, though provided with the right to legislate and to censure the cabinet, had to be forced into a "corset," limiting the duration of its sessions as well as the extent of its functions.

The powers of the President, greatly enhanced from the start, reached unanticipated proportions when, in 1962, a referendum, unilaterally ordered by President de Gaulle, provided for popular elections. This measure was fought by most traditional Republicans, including de Gaulle's old mentor, Paul Reynaud. It proved so popular, however, that, after it was approved by the people, opposition to it all but ceased, though the Socialists were slow in being converted, and the Communists held their ground since they could not hope ever to win an election held nationwide by majority vote.

The final triumph of the new institutions came with the victory of Francois Mitterrand in 1981. Mitterrand had always been an opponent of de Gaulle, but his opinions evolved.57/ When he became President, he declared immediately that he would claim all the powers which the constitution vested in the chief of state though he suggested that he would exercise them more discreetly than his predecessors had done. Events were soon to induce Mitterrand to shape the details of the government as much as did Georges Pompidou and Valery Giscard d'Estaing.

Changes of what might be called the constitutional superstructure are, however, of limited effect, and may actually backfire, unless the infrastructure of implementation and consent is sound. This infrastructure is provided by political parties. French experience since 1945 provides a striking illustration for the changes which may follow something a simple as the adoption of a different system of voting. We referred to the twin results of the introduction of P.R. in 1945: the loose groupings of the Third Republic which, at times, had the appearance of a no-party system, were abruptly replaced by well organized major parties. The individual deputy who had amounted to so much during the Third Republic was replaced by what, for a time, operated like soulless marionettes, with the party leaders pulling the strings.

The second change consisted in the inflation of extremist strength. The Communists could, all of a sudden, translate votes into seats in every part of the country and fully exploit the reputation which they had earned during the Resistance (at any rate after the Nazi invasion of Russia). In the municipal and provincial elections of 1945, they had, as mentioned above, polled about as many votes as the Socialists but been outdistanced in terms of seats. Had that process continued for some time, they might, as American experience with similarly placed parties so clearly suggests, lost votes as well, though in their case strong trade union support, providing them with great clout in certain areas, prevented a collapse of a type which Robert LaFollette's coalition suffered after its 1924 defeat.

P.R. then permitted the Communists to exploit their actual and potential voting strength to the fullest. It also permitted them to play the part of an opposition from within in the early coalition governments, and to act as a powerful opposition from the outside when they were removed from the cabinet in 1947. The Socialists, on the other hand, were more than ever burdened with full participation in coalition governments, all of which had to rely on right-of-center support in order to survive. Actually, the Socialists fell behind the Communists in the very first P.R. elections, held in October 1945. The Communists became "France's premier party" in November 1946, eventually outdistancing the Socialists in the range of 60:40 for the rest of the Fourth Republic.

The Fifth Republic abruptly reversed all of these trends when it reintroduced majority voting with two ballots. The plurality system, Anglo-Saxon style, would immediately have set in motion a tendency to a two-party line-up.58/ Such a step seemed hazardous, however, after a P.R. experience of a dozen years. The Socialists would have had a hard time regaining their old voting strength in a hurry, and the parties of the Right and Center were not fond of uniting on common candidates as would have been necessary in a one ballot system.

For the time being, the parties right of center were in the ascendency. Many Socialists resented that they were, for better than two decades, not the beneficiaries of the strengthening effect inherent in majority voting. Still, from the outset, the Socialists outgained the Communists in terms of seats, the first step to making them, once again, the leading party of the Left. They were soon to benefit also from the "cure d'opposition," the "cure of opposition:" they no longer had to participate in coalitions with right of center parties which had done so much to undermine their credibility during the Fourth Republic.

Thus, when Francois Mitterrand set out to revitalize the Socialist party he disposed of assets not available to his predecessors. He first wanted to regain the territory lost to the Communists after 1945, then dominate them, and ultimately win an absolute majority for his party.59/ In the parliamentary elections of 1978, the Socialists finally out-distanced the Communists although the latter did all they could to sabotage the chances of a common victory which would have benefited the Socialists more than themselves.

By the time the presidential elections of 1981 approached, the Communists had been placed under so much pressure that they had to endorse the Socialist candidate Mitterrand in the second ballot. The strong current engendered for Mitterrand in the first ballot grew even stronger in the second; it kept growing in the first and second ballots of the ensuing parliamentary elections. Thus, the Socialists and their left of center allies won an absolute majority of the seats, whereas P.R. would have given them considerably less and left them in an embarrassing dependence on the Communists. Mitterrand did feel that he could not govern without Communists in the cabinet. If left out, they would have continued to dominate the country's leading trade union and might have caused trouble in the factories and in the streets. Still, the Socialists were clearly in the driver's seat.

Under these circumstances, a younger political scientist60/ suggested completing the job of replacing the "quadripolar France"61/ which was the logical outcome of the second ballot, with a "bipolar France," a France with a two-party system, which was to result from introducing the plurality system. From the point of view of relative party strength, the time was ripe for such a suggestion, but the commitments, and the perceptions, of various political groups and their leaders created a different picture. The demand for a reintroduction of P.R. on all levels, national, regional, and municipal, had been a part of all agreements concluded between the Socialists and the Communists during the 1970's. In 1981, there was no "unity pact" between the two parties, but the Socialist party reaffirmed its support for P.R. Confused counsels in their ranks played their part in this commitment, but so did strong Communist reminders, repeated on every conceivable occasion. The promise to reintroduce P.R. was the price for their support of Socialist candidates in the second ballot.

When the Socialist victory in the parliamentary elections of 1981 assumed unexpected dimensions, the party's leaders -- some of whom had never shared the ideological commitment to P.R. dear to most of their associates -- might yet have acted to reverse old trends, but this could have been done only after a systematic reexamination of past attitudes. Instead, there was an attempt to wait and delay, hoping that the party's bright young men would come up with a system likely to give the Socialists what they wanted while giving verbal satisfaction to the Communists. It was overlooked that, once a party has reached the kind of strength which the Communists retained even in the first ballot of the 1981 parliamentary elections (16.17 percent), it is difficult to devise a P.R. system which will not permit them to benefit from provisions in favor of the major parties. As mentioned above, the Communists had profited from the Fourth Republic's limiting the effects of P.R. to relatively small contituencies. They might do likewise with any system according a premium to larger parties. Furthermore, any such system tends to free extremists from dependence upon both their moderate allies, or upon the marginal voter in the Center.

In any event, France fully demonstrates the channeling effects of electoral systems. During the Third Republic, even a weak form of majority voting kept the extremists of the Right and of the Left under strong pressure. The Fourth Republic witnessed the full effects of P.R. despite its dilution through comparatively small constituencies and the additional modification by the apparentements 62/ which governed the elections of 1951 and 1956.

The Fifth Republic's return to a progressively more "sanitized" majority system with a second ballot,63/ once again pushed the extremists into a tight corner. Eventually there developed a "quadripolar" system of related parties which generates relatively coherent majorities, backed up by an undiluted right of parliamentary dissolution.

The Fifth Republic was to accomplish much, but problems remain. The "quadripolar" party system had its effects at the Right as well as at the Left, and set the stage for the conflict between Jacques Chirac and Valery Giscard d'Estaing. Then, the restrictions on the rights of Assembly and Senate appear excessive to many. Nor does it make much sense that members of parliament lose their seats when they enter a cabinet. The reason for this provision was the tendency of Deputies and Senators during the Third and Fourth Republics to overthrow governments in the hope that they might become members of succeeding cabinets. Nowadays, the right of dissolution appears, in combination with majority voting, to be a strong enough safeguard against irresponsibility.64/

Lastly, there is the dualism between parliamentary and presidential power. So far, all Presidents have been spared serious problems because they had a reliable parliamentary majority. When, in 1962, General de Gaulle was opposed in his wish to institute the direct election of the President, he could secure a parliamentary majority by dissolving the Assembly, and when, from 1967 to 1968, his majority was tenuous, a new dissolution (induced by the student revolt) produced an even more convincing support for the President. In both cases, majority voting presented the voter with a clear answer -- something quite different from conditions prevailing in Weimar Germany, where dissolutions took place under a radical system of P.R., with the result that, in the crucial case of 1930, the voter, instead of being invited to choose one or two major groups, only had the option of plunging for one of five parties of some significance and an additional dozen inconsequential ones, with no positive result possible.

It remains conceivable that a French President might find himself in conflict with the National Assembly under conditions which would make it difficult for him to reassert his supremacy by calling new elections. The solution of the Third Republic, as Léon Gambetta told Marshal MacMahon, had been that the President had "to submit or to resign." A conflict with the potential for such a development could have developed in connection with the parliamentary elections of 1978. A leftist majority in the Assembly was prevented only by the failure of the Communists to fully support their Socialist allies. President Giscard d'Estaing might have either resigned or submitted to the new majority which, however, could have been expected to make life difficult for him. He could have dissolved a newly elected Assembly only with difficulty and would certainly have had to resign had the parliamentary majority been victorious in a new election.

In 1981, Francois Mitterrand was elected President under conditions which permitted him to dissolve the Assembly in the safe expectation of a favorable result. The situation might not be the same if a new Assembly election, due in 1986, should produce a right of center majority.66/

Lastly, the French political system tends in the direction of that type of "one-man-power" which has created problems with more than one American President. There have as yet been no serious problems in France. The major presidential decisions, while inevitably subject to political controversy, have not yet contained anything as irrational as was, for example, Woodrow Wilson's refusal to accept ratification of the Treaty of Versailles with reservations or of Richard Nixon's decisions in regard to Watergate and related matters. In the case of de Gaulle and of Giscard d'Estaing, there have been, however, vigorous charges of "government by personal whim." Francois Mitterrand, like George Pompidou, has so far proved to be immune to such tendencies, but expectations are always, to some extent, based on hope; there are no institutional sanctions if something goes wrong. As of now, French public opinion, while easily aroused by occasional charges that "personal power" influenced certain presidential actions, betrays no awareness of the point of principle involved. The "republican monarchy" has, in fact, hardly any serious opponents after Mitterrand's victory proved that a man of the Left may be elected as well as one of the Right. There remains, however, the old Achilles' heel of the French Left: a tendency toward an economic policy unable to fulfill the promises on which it was based, followed by enough disappointment to erode the Left's electoral base. Mitterrand's supporters found this out when, a year after their great victory, they lost heavily in the provincial ("cantonal") elections.

It is not possible, then, to say that the political system of the Fifth Republic has proven itself. Taking French republican experience as a whole, one conclusion emerges, however: Madison was right in that some of the most vital aspects of political life "result from the form of government itself." Nowadays, we like to ascribe overmuch to a country's "political culture." That concept is useful within its proper limits, but these limits begin where "the form of government itself" takes its claims. Thus, the Third, the Fourth, and the Fifth Republics had each its own distinctive pattern of political action, which then changed from one to the other abruptly rather than gradually. As mentioned above, the Third Republic soon slid into the pattern of parliamentary irresponsibility which Walter Bagehot had anticipated, as a result of a lack of logic in the political structure, before there had been any actual experience to bear him out. The lack of discipline of the Deputies and Senators was by many ascribed to the French "national character;" the term "political culture" had not yet been coined. Concentrated individualism, both charming and destructive, soon permeated all areas of the country's political life. The writer who published under the pseudonym of "Alain" was to provide for its most appealing rationalizations, both in his "Elements of Radical Doctrine" and in his "The Citizen against the Powers," the title of which clearly lined him up with the proponents of a "freedom from the state" as against those of "freedom within the state."

There came the Fouth Republic, and from one day to the next the individualistic and irresponsible Deputies of the past had been transformed into marionettes, with the strings pulled by party leaders: P.R. elections had produced parties as rigid as any country had seen but, in their unregulated multiplicity, unable to provide for coherent action. Matters changed somewhat after the introduction of the "apparentements" in 1951. Alliances gave the smaller groups of the Center and Center-Right a chance and, after the elan of the Gaullist "Rally of the French People" had been broken, most of its Deputies began to cooperate with coalition governments. The overall result still entailed a great deal of confusion and caused two American observers, Constantin Melnik and Nathan Leites, to describe the political action patterns of France's parliament in a brilliant volume entitled The House without Windows.67/ They did not use the term "political culture," but meant something similar when they stated their objective as one "to illustrate the operation of those interwoven tendencies, beliefs, and feelings that determine parliamentary life, and that taken together might be called the rules of the game." The irresponsibility to which these rules could lead culminated in the election of the second President of the Fourth Republic which was after 13 ballots finally achieved on December 23, 1953, and which did much to undermine what was left of the Fourth Republic's reputation. The book appeared in 1958 just when the Fifth Republic established an entirely new game with entirely new rules. The appraoch of the two authors excluded the consideration of the political structure and, as a result, their own edifice was, like the building in which the National Assembly meets, "A House without Windows." Those who, like Michel Debré, had been guided by an awareness of what political form meant, did have a "window" from which they see the outlines of an alternative, to the realization of which they were to contribute decisively.

France has been discussed in some detail because the change from majority voting to P.R. and back to majority voting offers a rare opportunity for comparison. The following discussion of Germany and Italy will have to be a little less extensive and, so far as other countries are concerned, a listing of a few major points will have to suffice.

## The Federal Republic of Germany

Post-1945 Germany is most frequently mentioned in positive evaluations of P.R. The overall picture does conflict strongly with the dismal experience of the Weimar Republic. Eventually, a "two-and-a-half party sytem" developed: the Christian Democrats (DCU) (in Bavaria, the Christian Social Union {CSU}) came to be opposed by the Social Democrats, with the Free Democrats in the Center. The Chancellor led one of the major parties; his name came to be known before the elections. Furthermore, the Free Democrats indicated, more clearly as time progressed, which party they intended to join in a coalition. The result was almost the same as that of a British type of government, in which the plebiscitary element is added to the parliamentary, with an increase in legitimacy, stability, and efficiency.

*Almost* is, however, not *quite*. The events of 1981 and 1982 were to demonstrate, not for the first time, that the system tended to become unhinged when the overall condition of the country became unsettled.

The electoral system was the weakest link in the chain holding the political structure together. The original tendency toward a two-party system was strong. At the Right, the Protestant voters who, in the past, had voted for the German Nationalists and some minor parties, joined with the surviving leaders of the old, more or less Catholic, Center party to form the CDU-CSU. At the Left, Russian occupation policy in what later became the "German Democratic Republic" largely destroyed the old Communist party, leaving the Social Democrats (SPD) an almost clear field. Had the plurality system been used from the outset, Germany would have had a stronger two-party system than England. (It need not be repeated that the proper definition of a two-party system is a system in which a major party can, as a rule, expect to secure an overall parliamentary majority.) There will always be minor parties, and all doors ought to be kept open so one of them can replace either of the major parties when it loses touch with the electorate.

The plurality system was not adopted, but English influence was exerted to limit the effects of P.R. First, all but one of the *Laender*,68/ and eventually what became the Federal Republic, were divided into single-member districts in which the candidate with the highest vote was elected. A part of the seats (at present, one-half) was, however, allocated from lists presented in each *Land* at large, and the seats which a party obtained in single-member constituencies were deducted from those allocated to it from the list, the overall effect being one of almost perfect proportionality between votes and seats. Typical splinter parties were, however, excluded. A party could obtain seats from the list only if it had either at least one (later for Federal elections raised to three) direct seats or, alternatively, five percent of the total vote.

German political development did, however, not immediately conform to the "two-and-a-half party" pattern. Alfred Weber, the brother of Max Weber,69/ emphasized in 1941 that the percentage of the votes cast for smaller parties rose from 7.8 in the Diet elections of 1946 to 30.2 for the first Bundestag. That body, in fact, contained nine parties and groups, plus three Independents and one representative of the Danish minority. According to the Basic Law, as the Constitution of 1949 was called, an absolute majority was needed to elect the Federal President's candidate for the office of Chancellor. Konrad Adenauer obtained exactly 202 votes in a Bundestag with 402 members, and there has been no end of speculation as to how the last vote or two were obtained.

All of this could have led to something close to Weimar conditions. Of the two factors which were to change that prospect, the first was Adenauer's leadership. Adenauer *wanted* to lead. When confronted with data which pointed to the unpopularity of certain of his measures, he did not bend but replied that the people's views had to be changed. Adenauer never flagged in his support for the social market policy (as introduced by his Minister of Economics, Ludwig Erhard) nor in his advocacy of cooperation with the West.

The second factor in the consolidation of the German party system was the *Wirtschaftswunder*. It was the result of a carefully devised policy, going back to a system of thought developed by a group of academic economists whose work began in the darkest days of the Third Reich. The effects were stunning. German production was soon booming. Upwards of 10 million ethnic Germans expelled from Eastern and Central Europe (into what then was a country in which the rubble from wartime bombings still filled major city streets) eventually were housed and provided with jobs. The demand for labor was such that, in the Sixties, several million foreign workers had to be hired.

The *Wirtschaftswunder*, assisted by the Marshall Plan, had begun with the currency reform of June 1948, but it took several years before its implications were fully perceived by the electorate.70/ This explains why there was a serious political crisis as late as in the Diet elections of 1951. The Refugee Party (BHE) and the neo-Nazi Socialist Reich Party (SRP) grew phenomenally for a while. There was a strong decline in the major party vote, in particular in that of the CDU-CSU. A Weimar type party system seemed quite near.

The perception of the *Wirtschaftswunder*, combined with a brilliant election campaign conducted by Adenauer and the CDU in 1953, changed the picture, as did a change in the election law: when the attempt of the CDU to come closer to majority voting failed, the leader of this move, the Hamburg deputy Hugo Scharnberg, succeeded in insisting on two improvements: a party had henceforth, in order to secure seats from the list, to secure five percent of the votes in the entire country rather than in a Land, or alternatively, three direct seats rather than one. Several minor parties could not meet the new requirements, and the stage was set for the election miracle, the Wahlwunder of 1953: the Christian Democrats managed to obtain one more than a majority of the seats, something unprecedented in German political history. They could, with economic prosperity continuing, increase their strength in 1953, but their majority was never quite cohesive. The places on the lists, from which so many of their deputies had been elected, had been apportioned between a variety of groups which tended in different directions. The results were aggravated by the fact that the head of the state could not, after a simple request by the Chancellor, dissove the Bundestag; the integration effects of that institution as described by Bagehot were absent. The party lost its absolute majority in 1961, never to regain it.

Meanwhile, there was a change left of center. The Social Democrats could, under Kurt Schumacher and Erich Ollenhauer, not broaden their support and never exceeded one-third of the vote. Eventually, Herbert Wehner took a hand, and the result was the party's Godesberg program of 1956, which took long strides toward laying the foundation for a making of the SPD into a "People's Party" on the model of the CDU-CSU. On this basis, the SPD could become a serious rival for the CDU-CSU.

In 1963, Ludwig Erhard followed Konrad Adenauer as Chancellor, and did well in the Bundestag elections of 1965. Prosperity was still undiminished; the total number of unemployed averaged 147,000 while there were 490,000 unfilled positions. The economic picture changed, however, within a year. By the fall of 1966, stagnation turned into recession.

The political atmosphere became charged and the FDP ministers left the coalition. The result was the first serious challenge to the assumption that political stability was guaranteed by the "constructive vote of censure" according to which a Chancellor could be ousted only if the Bundestag elected a successor with an absolute majority of its member (Art. 67 of the Basic Law). Erhard, then, tried to stay in office, but soon found it impossible to govern and resigned. Thus, the centerpiece of the edifice of Germany's "rationalized parliamentarism" which was to have provided a reliable basis of political stability, was shown to be of questionable value.71/

Erhard's cabinet was succeeded by a "Grand Coalition" of Christian Deocrats and Social Democrats. Leading members of both parties were tired of their dependence on the smaller Free Democrats in Land as well as in the federal coalitions. The new Minister of the Interior, Paul Luecke, had reached an understanding with Herbert Wehner to the effect that the election law should be changed. When the Chancellor, Kurt Georg Kiesinger, presented his cabinet to the Bundestag he declared that a reform of the electoral system was his first concern; the purpose was to entrust the decision as to which party was to form a government to the people themselves, with the understanding that, as a rule, one party would have an overall majority and no more coalitions would be needed.

In their euphoria, Paul Luecke and Kurt George Kiesinger were not aware of the many ways in which vested interests and intellectual confusion would combine to frustrate their efforts.72/ The new government concentrated on the economic problems of the recession and made a brave effort to establish an imaginative consensus on economic policy between Christian Democrats and Social Democrats. However, as Gaston Doumergue had done in France in 1934, they overlooked that, unless structural reforms are adopted without delay, events will push them out of people's minds, and the vested interests will carry the day. This is what happened in Germany. Even more importantly, a radical change in the intellectual atmosphere occurred when, after the 1969 elections, a coalition of Social Democrats and Free Democrats was formed. The Ministry of the Interior, charged with all problems of the political structure, went to the small coalition partner, the FDP, which henceforth had a controlling influence over all pertinent discussions. Matters went so far that neither Social nor Christian Democrats dared discuss electoral reform even internally. The Free Democrats left no doubt that, as soon as there was a hint of such discussions, they would punish the party in question by abandoning it as a coalition partner, be this on the federal or on the Land level.

The Free Democrats overlooked that the German version of P.R. need not, as they assumed, always play in their favor, making them, and them alone, the arbiters between the Christian and Social Democrats. The neo-Nazi SRP and the Refugee Party of 1951 had demonstrated that others, too, could play that game. The Wirtschaftswunder, more than any other factor, took care of them, and by 1966 it seemed obvious that the election law was indeed a "lex FDP," protecting them against minor competitors and leaving them as arbiters among the "majors." Observers such as the former Minister of the Interior, Gerhard Schroeder, and Professor Goetz Briefs, warned that the result was a "fair weather democracy," always exposed to serious risks when a tempest struck.

The German recession of 1967/68 was not very deep, but its political warnings should have been clear. The National Democratic Party (NDP), widely regarded as neo-Nazi, obtained seats in one Land Diet after the other. Its strength receded as the country's economy improved in 1969 and, in the Bundestag elections of 1969, it was down to 4.3 percent; an additional 0.7 percentage points would have put it into the Bundestag with close to a couple of dozen deputies.

The FDP, with 5.8 percent, did make it, but a loss of less than one percentage point would have eliminated it. The "lex FDP," therefore, condemned it to "live dangerously," the guillotine of the 5 percent clause constantly suspended over it. Furthermore, the party had to look for its margin of safety more among those favorable to its coalition partner than among those of the common opposition. The FDP under Adenauer and Erhard presented itself as a safeguard against "rightist" tendencies, and under Willy Brandt and Helmut Schmidt as a "brake on socialism." Substantial, if suppressed, animosity toward it on the part of its coalition partner was the inevitable result.

Also, a change of coalition partner was bound to be a wrenching experience. Such changes are considered normal under ordinary P.R. systems, but have come to be considered unnatural under the German version; once the FDP has expressed itself in favor of a particular partner before an election, it is expected to stay with it. There is, however, the constant burden of the "Profilneurose," the neurosis arising from the party's need to etch out a profile of its own. This is particularly difficult at a time when the mass media concentrate so much of their attention on the head of the government, whose access to television, in particular, is much greater than that of any of his cabinet members, a fact which discriminates against the smaller coalition partner. Furthermore, true independence has, occasionally, to be demonstrated by changing the coalition partner. This is serious even when it happens after a new election, as the minor party may lose leaders as well as followers. The needed new voters will, as a rule, have to be obtained from among those favorable to the greater partner, a fact which sets up strains at the very beginning of a coalition.

The FDP went through all of that after 1969. The defection of several of its deputies (as well as some from the SPD) seriously weakened the Brandt-Scheel government. The Christian Democratic leader, Rainer Barzel, could hope that a "constructive vote of censure" would make him Chancellor. When he failed by a couple of votes, there were charges of vote buying. One deputy even claimed that he had received cash for his defection, while the name of the other remained hidden because the vote was secret. A secret parliamentary vote is one more facet of "rationalized parliamentarism," which is unthinkable under the "true"73/ version of parliamentary government as practiced in England and the Commonwealth countries. When it began to exert that debilitating influence on Italian politics which continues to this day, the veteran Luigi Sturzo74/ reminded his countrymen that its origin was the fear of what an autocratic king might do. Sturzo asked the question whether the people in a democracy did not have the right to know how their representatives had voted, and whether the representatives ought not to stand up for their convictions.

Willy Brandt solved his early problems by arranging for new elections which gave him a triumphant majority. "Rationalized parliamentarism" exacted its toll. Before a dissolution, the Bundestag must have failed to give the Chancellor an absolute majority when requested. Then the President can be asked to dissolve the parliament, which can be done within the following 21 days. Brandt (as Kohl in 1982) had to ask his own supporters not to vote for him.

Brandt experienced difficulties, however, and was eventually replaced by Helmut Schmidt who had as firm a grasp on the government as did Konrad Adenauer. His opponent in the 1976 elections was Helmut Kohl, whose CDU/CSU had 48.6 percent of the popular vote, followed by the SPD with 42.6 percent and the FDP with 7.9 percent. It is difficult to see how the Christian Democrats could have lost under plurality voting; no English party has secured that high a percentage since the end of the war. When, however, the introduction of P.R. was debated by the Belgian Chamber in the 1890's a deputy said: "We shall be governed by his Majesty the Status Quo." P.R. (unless watered down by small constituencies) does not accord a premium to the stronger party, and the result is to delay, and at times prevent, an alternation in power even if it might exert a vitalizing influence on the political system.

Under Schmidt's leadership, the SPD/FDP coalition increased its strength in the *Bundestag* elections of 1980, but soon found itself confronted with mounting economic and, in particular, budgetary difficulties. Schmidt's position within the SPD was increasingly challenged by the party's Left. Control of the Federal Council (the *Bundesrat*) passed into the hands of the Christian Democrats who had done well in *Land* elections and who, in the *Bundesrat*, made the passage of a variety of laws dependent on significant concessions. The restlessness among Free Democrats reached a new peak. The Minister of Economics, Count Lambsdorf, was a convinced believer in the market economy, and in late summer of 1982 he drafted a detailed memorandum which implied a vigorous challenge to Social Democratic policies. His colleague, the Foreign Minister, Hans-Dietrich Genscher, published an article in Foreign Affairs[75] which, while defending the line taken by the government, contained certain redefinitions which Schmidt (physically anything but well) took to mean concessions to the CDU.

In the end, Schmidt jumped the gun. In a *Bundestag* speech, he more or less told the Free Democrats to leave the cabinet, which they did. He wanted the *Bundestag* dissolved after the failure of a request for a vote of confidence, with himself remaining in office and entering the ensuing campaign as Chancellor. Meanwhile, Christian and Free Democrats had agreed on a coalition. They insisted on a chance to take office, electing Kohl Chancellor. This they were able to do although a number of FDP deputies did not go along.

Schmidt made a forceful plea to the effect that the Free Democrats had entered the 1980 campaign with the promise to stay in the coalition for the Bundestag's full four-year term. Their leaving the coalition was a "betrayal." The Free Democrats referred to the mounting difficulties besetting their cooperation with the Social Democrats which, they felt, meant that continued presence in the coalition would have violated their principles.

Above all, both Christian Democrats and Free Democrats declared that nothing in the Basic Law prevented a change of coalitions during a parliamentary term. Actually, when the "Parlamentarischer Rat" adopted the "Basic Law," its leaders felt guided by the experience not only of Weimar, but of virtually all P.R. countries in which, so far, neither law nor practice has prevented a change of coalition partners. Schmidt's pesonal experience was that of Germany's postwar period during which, at least on the federal level, there had developed a system closer to the English than to the continental type of paliamentary government. Schmidt may have been well aware that, if his views were to finally prevail, they presupposed a change in the election law designed to make it probable that, in elections, one party could have a parliamentary majority. There is some reason to assume that Schmidt was in favor of a "funktionsgerechtes Wahlrecht" -- an electoral system which would serve the integrating tasks of a serviceable electoral system.76/ In any event, the unexpected echo which his charges of "betrayal" found in the electorate suggests that the people were, by implication at least, in favor of an electoral system which could be expected to produce a government capable of serving a full parliamentary term.

This conclusion was, however, not drawn, and the result was aggravated by the rise of a new party, the "Green-Alternatives." They constituted a lax grouping of ecologists and of people willing to use violence in occupying vacant houses or trying to block a nuclear plan or a new airport runway. The growing protest movement against nuclear armaments provided additional recruits. At first, the Social Democrats reacted vigorously against the newcomers, but their attitude changed when the "Greens" won seats in a number of Land parliaments, beginning with Berlin. There, the FDP did manage to stay above 5 percent and remained willing to form a coalition with the SPD, but the two did not command a majority. The CDU had won 58 of the 75 single-member seats but, when these were deducted from the total available to it under P.R., the party was two seats short of a majority. Since the Free Democratic deputies had been instructed by their party Congress not to enter into a coalition with the CDU, the deadlock seemed to be complete. The national leaders of the FDP, however, encouraged the Berlin deputies to support the Christian Democrats; five of them did so on a case-by-case basis. Thus, the immediate crisis was solved and the result appeared tolerable in a city-state with no responsibility for foreign affairs or for the handling of a serious recession. Several months passed, however, before matters settled to the extent they did.

Developments were more serious in the following elections to the Hamburg and Hesse Diets. In both cases, the Free Democrats stayed below 5 percent, while the "Greens" exceeded that limit comfortably. Since neither of the major parties had a majority, it looked like paralysis. In Hamburg, the city's Social Democratic mayor, von Dohnanyi, negotiated patiently and at length and, in the end, unsuccessfully with the "Greens." Then came the dramatic change of the Bonn coalition and the mighty echo which Helmut Schmidt found with his charge of "betrayal." Schmidt resigned his position as shadow chancellor (Kanzlerkandidat) for reasons of health, but also because he had "had enough" of the internal squabbles within his party. He was succeeded by Hans Jochen Vogel, who had been a leading opponent of the Socialist left as mayor of Munich and who, after a period of Minister of Justice in the federal cabinet in Bonn, had been summoned to take over his party's leadership in Berlin, first as mayor and then as the leader of the opposition. His patient negotiations with the Berlin "Greens" failed just like those of von Dohnanyi in Hamburg. But he had established a record as a man willing to compromise where possible, and he carried that record into the campaign for the Bundestag elections of March 6.

Under these conditions, the "Greens" came to influence German politics in two respects. First, there was the prospect of a deadlock. In Hamburg, it was broken in new elections held in December, where the Social Democrats benefited greatly from the reaction to the "Bonn betrayal," winning an absolute majority, as they had in 1978. Hamburg, however, was Helmut Schmidt's town. He had established a reputation for efficiency when "Senator." As Chief of the Interior Department, he provided dramatic leadership in a potentially disastrous flood. His achievements as Chancellor in Bonn, extending over eight and a half years, added as much to his local as to his national reputation, and he took part vigorously in the Hamburg campaign.

The question was whether this remarkable achievement could be duplicated nationally. The deadlock which followed Hamburg's June elections had caused people to speak of the "Hamburg conditions" (Hamburger Verehaeltnisse); that term expressed apprehensions as to the possibility of similar results elsewhere, including the country at large. After the December elections, Hans Reiser commented in the Sueddeutsche Zeitung:77/

> It would be a political joke if "Hamburg conditions" were to arise in the Bundestag after they have been remedied in Hamburg itself. Such a situation could not be easily remedied by repeat elections for the Bundestag as has been done in Hamburg.

There were several possibilities as to the outcome of the Bundestag elections. First, thee FDP might recuperate enough from the nadir reached in the Hesse elections (held in September immediately after the change in Bonn) to scale again the 5 percent hurdle. In that case, Christian Democrats and Free Democrats could continue their coalition. The second possibility was an absolute majority for the Christian Democrats, which had appeared likely before Helmut Schmidt had initiated the dramatic propaganda which turned German politics upside down.78/

The third possibility was a national election result on the model of the June elections in Hamburg and the September elections in Hesse, with the "Greens" holding the scales between Christian Democrats and the Social Democrats. There were two ways to break the resulting deadlock. The Liberal weekly, Die Zeit, suggesteed that, in such a case, the two leading parties should "swallow the toad" of a new "grand coalition." Such a government would, however, be more questionable than was the one formed in 1969. It would have to start after a campaign in which the partners attacked each other viciously (with the significant exception of the two leading contenders, Helmut Kohl and Hans

Jochen Vogel). The inevitable result was to aggravate the differences between them in regard to both domestic (in particular economic) and foreign policy. Their difficulties in cooperating would be water in the mills of the fringe parties of the left, sooner or later likely to be followed by similar groups at the right, all claiming that the two major parties had betrayed their principles.

There remained, however, the alternative which Horst Ehmke, one of the younger leaders of the SPD, had suggested before the elections of 1969: a government formed by the larger of the two major parties was to be "tolerated" by the other (opposed but not overthrown) with the understanding that the two would agree on an electoral law likely to give one of them a majority in new elections, to be held as soon as possible. In 1982, German voting behavior still exhibited a larger concentration on the two major parties than existed in England. The "Greens" could not achieve a plurality in any district in the elections in which they participated. They would, with any kind of majority voting, hardly play a larger part than they did in the French elections of 1981, there they did not conquer a single seat. That they had only 1.08 percent of the votes results from the fact that, aware of the implications of majority voting, they presented candidates in only a third of the constituencies. In most of the others, they supported the Socialists. While they had contributed to the Socialist majority, Mitterrand and his party, once in power, still pursued the policy which they deemed right. As to Germany, it was in January 1983 still safe to say that, under any kind of majority voting, the commotion caused by the "Greens" would soon be under control.

Germans would, however, not be Germans had they paid serious attention to simple solutions. The preference of their intellectual leaders is characterized by the popular question: "Warun denn einfach, wenns auch kompliziert geht ?" -- "Why do it simply if there are complicated ways?" There soon began deep ("tiefgruendige") discussions as to far-reaching changes in the country's system of values, in its social structure, and in the worldwide atmosphere. There were, of course, changes, as there are changes in any country at any time, in particular in a free country. James Madison would have taken these into account as he did the changes, and the cleavages, of his own day. But he limited himself to the simple problem of how to channel old and new social forces, being particularly concerned that what he called "factions" should not benefit from the free political processes of the country by subverting them from within. In Germany, the "Greens" were given a chance to do just that. At the time of this writing, it is not yet possible to say where it will lead.

A last possibility has, however, still to be mentioned: even if the more extreme forms of a political deadlock are avoided, there is a significant influence of the "Greens" on German politics. The direction of that influence had become clear by the beginning of 1983. To some extent, this influence was quite properly exerted. Environmental concerns were accorded a low priority between 1948 and 1973 (when world production quadrupled), and the catching-up process might well be accelerated. The mixture of romanticism and radicalism which the "Greens" exploded over the German political scene was, however, something else again.

So was the opposition to parliamentary government and the radical negation of that degree of nuclear rearmament which alone offered a chance to get the Russians (who had no such protest movement to contend with) into the mood to strike a reasonable bargain. In this regard as in others, a group which never polled as much as 10 percent in any of the Laender in which P.R. gave them parliamentary seats was able to see its effectiveness escalated out of proportion to its numbers. Under a majority system, these voters would, as in France, have had to combine with others in order to have their views made effective, and their influence would have been kept in proper proportions. Under P.R., these groups could rise and expand without any serious dialogue with others. In the end, they could try to exert a power of veto over what 90 percent of their fellow citizens wanted.

These remarks on Germany, as well as those on France, have exceeded the space planned for them in this paper. The final conclusion can only be that there exists no "German political model" which satisfied the country's needs and which others could imitate with profit. Men of exceptional ability, such as Adenauer and Schmidt, have accomplished much with the means at hand. Even they needed the help of an unusual prosperity which, with minor interruptions, lasted well into the 1970's. The 5 percent clause and the "constructive vote of censure" did affect the course of events, but not without dysfunctional side effects. Germany would have done better with a parliamentary system of the "classical" type than with the version of "rationalized parliamentarism" which the Parlamentarischer Rat designed in 1949 when it was unwilling to adopt the plurality system, which would have avoided so much of the trouble with the Federal Republic was to experience and which may recur in aggravated versions during the "zero-sum society" of the 1980's.

## Republican Italy

Postwar Italy slid back into P.R. without the general public being aware of it. The big issue was the choice between (parliamentary) monarchy and republic, eventually decided by a referendum in favor of the latter. P.R. was, as in France, demanded by the mass parties, meaning the Communists who had good reasons, and the Socialists and the Christian Democrats who did not.

Prominent members of the old Liberal elite did warn in a Manifesto79/ signed by the future President, Luigi Einaudi, by the Independent leader, Arturo Labriola, the philospher Benedetto Croce, and the former Prime Ministers, Ivanoe Bonomi, V. E. Orlando, and Francesco Nitti, which concluded:

> The only system which under present conditions creates a representation effectively designed by the electors -- and which can reeducate the Italians for the exercise of freedom -- is the majority system in single-member constituencies, as it existed before 1919, with such modifications and adjustments as might prove opportune in the course of time.

Luigi Einaudi expressed himself more fully in a speech delivered before the Consultative Assembly on February 11, 1946.80/ Rational analysis had, however, scant chance against the big battallions of the mass parties. Besides, according to a widespread impression, the English and Americans favored P.R.81/

Italy's Republican Constitution did avoid some of the drawbacks of "rationalized parliamentarism." The appointment of a cabinet follows the simple and sensible patterns of the past. The President appoints the Prime Minister, choosing the candidate who, he feels, is best able to rally a majority in both the Chamber and the Senate, and, on his recommendations, the other ministers. The cabinet needs the confidence of both branchs of parliament which requires, however, but a simple majority of the votes cast. The President can dissolve one or both branches, except during the final six months of his term, acting on the advice of the Prime Minister.

Problems arise from the existence of "perfect bicameralism." "Classical parliamentarism" limits the rights of the second Chamber to a suspensive veto. The dependence of the government on both the Chamber, and the Senate and the need of senatorial approval for all legislation, creates extra work for an harassed government. Lastly, the secret ballot which the Constitution requires for the election of the President by a joint meeting of Chamber and Senate was extended by rules of both houses to other matters, and occasionally causes real trouble.

Italy has a double dose of P.R. as the voter can cast "preferential votes" for candidates presented on the party list of his choice. The sequence in which candidates are elected depends entirely on how many preferential votes they have received. While this appears to be democratic, it provides, in reality, ideological and interest groups with a tendency to undermine party cohesion. During an election campaign, the various "currents" (correnti) concentrate so much on their own candidates that some voters are hardly aware of the party which they are supposed to support. Matters took a turn for the worse when, beginning with the elections of 1953, it became possible to mark preferences by writing down the numbers with which the candidates were marked on their party's ballot rather than their names. Many wrote down the numbers but forgot to make specific mention of their party. In 1953, hundreds of thousands of votes were declared invalid for this reason.82/

The preferential votes have had their share in shaping Italy's political life. By the end of 1982, there had been 45 postwar cabinets. Whenever a prospective prime minister tried to form a new coalition, he had to balance not only the claims of up to five parties but also those of the sub-parties, the correnti. When the new government was in place, it could be defeated not only by the defection of some of its partners, but also by the "free shooters," members of some corrente or other who were dissatisfied with the government itself or with one of its measures. The secret ballot enabled them to bring it down without assuming any responsibility.

It is a wonder that Italy's political leaders, in spite of everything, always found a formula to put a new government in place and to sustain it for a time. Still, since in 1953, when the Christian Democrats lost the absolute majority which an unusual concatenation of circumstances had given them, there has never been a government which could have expected to live a normal lifespan and do a normal amount of work.

Two major attempts have been made to develop a new approach. In the early 1960's, the Socialists who, for a time, had been allied with the Communists, were ready to cooperate with the Christian Democrats and the minor centrist parties. There was to be an "opening to the Left," permitting stable governments to make up for the needed adjustment to a rapidly changing situation. This the weak coalitions formed by Christian Democrats and minor centrist parties had not been able to do. Yet, six years later a detailed analysis by an Italian political scientist concluded: "The balance sheet cannot be called positive. The Italy of 1968 suffers from the same ills as the Italy of 1962."83/

The 1970's saw the country's burdens aggravated by the oil crisis and a psychological atmosphere which facilitated the rise of large-scale terrorism. The Communists offered to help by entering into an "historic compromise" with the Christian Democrats. The Christian Democrats declined, however, fearing the kind of Trojan horse tactics which extremists of the Right and Left have repeatedly applied with success.

A change for the better seemed in the offing when, in 1978, the respected Socialist, Alessandro Pertini, was elected President and this was followed, in 1981, by the formation of a government under the Republican, Giovanni Spadolini. For the first time, both of the country's top positions were not in the hands of the Christian Democrats -- the party which had to pay its tribute to a generation of uninterrupted responsibility which, since the electoral defeat of de Gasperi in 1953, had not been coupled with commensurate power. Spadolini's party secured but 3 percent of the popular vote but, for a while, he was able to get things moving, achieving, in particular, significant success in the fight against terrorism. The basic political trouble of highly heterogeneous coalitions remained, however. Spadolini's five-party cabinet included proponents of an anti-inflationary policy based on the rules of the market as well as old-line Socialists who believed in large-scale government intervention. In the end, friction reached such a point that a Christian Democrat and a Socialist Minister traded insults which exceeded the accepted level. Spadolini finally resigned in November and was succeeded by the veteran Christian Democrat, Amintore Fanfani, who faced the same difficulties.

There had been a preliminary crisis in August when a government proposal was defeated, apparently by the defection of Christian Democratic "franco-tiratori." This led to vigorous protests by the Socialists,84/ whose energetic Secretary, Bettino Craxi, had, for some time, emphasized that a good part of Italy's troubles were institutional, and required substantial changes. He summarized his views in a vigorous speech delivered in the Chamber.85/ The country must, he repeated, improve its "governability," and institutional reforms were needed for this purpose.

Craxi was, evidently, inspired by the renaissance of the French Socialists under Francois Mitterrand. In France, however, institutional reforms had come first. As mentioned above, the Socialists, who had been about even with the Communists in terms of votes and greatly superior to them in terms of seats with majority elections in 1945, slipped with P.R. to about 60 percent of Communist voting strength and correspondingly in seats. The proportions changed dramatically when, in 1958, majority voting was reinstituted, eventually causing the Communist percentage of the votes to fall, in the first ballot of the parliamentary elections of 1981, to 16.17 percent, whereas that of the Socialists (including their left of center allies) rose to an unprecedented 37.51 percent. The momentum developed in the first ballot carried the Socialists to an absolute majority of the seats in the second, leaving the Communists with 44 seats as against 269 for the Socialists and their allies.

At the end of the war, the Italian Socialists had started off as well as their French counterparts, receiving 20.7 percent of the votes in June 1946 as against 19.0 for the Communists. Under the system of run-off elections as it had existed until 1918 (and was favored by the proponents of majority voting), the Socialists could expect to be well ahead of the Communists in terms of seats. The Socialists might also have done better in terms of votes, and their superiority over the Communists could have increased in subsequent elections.

It is also important that, since the majority system makes victory dependent on the undecided voters in the center, control over a party tends to gravitate toward those most likely to gain the sympathies of these "marginal" voters. In the Italian Socialist party, there was a moderate group, led by Giusepe Saragat, and a more leftist group, led by Pietro Nenni. Under the conditions created by P.R., Nenni could conclude a unity pact with the Communists, causing Saragat to split off and found a Social Democratic party of his own which, however, could never secure parity with Nenni's group. Majority voting in single-member constituencies might have increased Saragat's influence sufficiently to have kept Nenni from concluding his pact with the Communists.

Nenni eventually saw the error of his ways but, when in the 1970's the pragmatic Craxi became the party's leader, he faced a Communist party more than twice as strong as his own in terms of both votes and seats, and growing. Sergio Ortino, writing in 1968,86/ could still suggest that, under plurality voting, the Communists would have had to choose between finally becoming social-democratic, or suffering a decisive defeat. Under P.R., they could, however, reach a high of 34.4 percent of the votes in 1976 without having to make too many changes. They lost a little in the following elections, and Spadolini was, during his brief tenure, able to demonstrate that laws could be passed without paying as much attention to them as the preceding cabinets had done. Still, what can be accomplished to make Italy more "governable" by modifying the system of voting must now be based upon a careful analysis of the concrete situation; what promises success one year may not do so the next. As of 1983, the Socialists were in no position to deal with the Communists, as Mitterrand had been able to do.

One improvement could certainly be made: the abolition, or the serious modification, of the "preference votes." It would help to bring the correnti and their disruptive influence under control. The correnti might, of course, be strong enough to prevent such a step.

So far as the German 5 percent clause is concerned, it might prove as dysfunctional as it did in those German elections when it permitted the "Greens" to enter parliament and kept the Free Democrats out. In Italy, Republicans, Liberals, and Social Democrats would be in immediate danger, and the Communists would be among those attributed the seats lost by these groups.

Various forms of majority voting could facilitate the cooperation of the moderate parties. In England, the two-member constituencies which were the rule until 1885 permitted related groups to win one seat each. Then there is the possibility of three-member constituencies with two seats going to the strongest group and one to its leading opponent (preferably only if it is at least half as strong as the leader). All of these plans -- and there are others -- depend for their success upon the willingness of the moderate parties to cooperate -- the rank and file as well as the leaders. It must be clear that a truly national, rather than a party goal, is to be reached.

The reform proposal most publicized in August 1982 was to limit, if not abolish, the secret vote. Such a measure could make a significant contribution toward "sanitizing" Italian politics. It was hardly surprising when, after it was referred to a parliamentary committee, the "vested interests" once again felt confident of having their way.

There is finally the plan to augment the powers of the President and have him elected by popular vote. That would, of course, mean majority voting at the top. Experience with such an arrangement is, however, not uniformly positive. Von Hindenburg in Germany and Allende in Chile did not serve the purpose of democratic integration. Where moderate men are elected, as was the case in Finland and in Austria, the hoped for stabilizing influence did occur. There is, however, always the possibility of rivalry at the top. A report on Portugal, where even a limited system of P.R. has failed to live up to expectations, states:

> Presiding over all this political and economic uncertainty is President Eanes, a 47-year old, sphinx-like soldier whose power and influence rival that of the Prime Minister. One expert said this situation contributed to instability because "no one is really sure who is boss.87/

## Smaller Countries

Considerations of space rule out serious attention to the Scandinavian and Benelux countries. It might be mentioned in passing that recent developments give no evidence of a successful pattern of "consociational democracy" as ascribed to them some time ago. Professor Arend Lijphart, who did so with learned care in an earlier volume,88/ expresses himself with notable reservations in a later one.89/ Other considerations apart, we cannot follow him when he concentrates on the conditions prevailing around 1960 (Ibid., p. 2) because that means choosing a period of unprecedented prosperity, whereas our problems are those of a near "zero-sum society." That type of society has, in the countries concerned, led to crises which were as severe as in any others.

In regard to all of these countries, beginning with the France of the Third Republic, there is, however, a tendency to minimize the effects of political instability. The United States is the last country in which this should be done. The Federalist No. 62 contains a comprehensive and concise treatment of the subject, beginning with the sentence: "To trace the mischievous effects of mutable government would fill a volume." Damage is done first in the field of foreign policy, because "mutable government ... forfeits the respect and confidence of other nations," a point which is pressed with vigor. The trouble, however, is general for "the want of confidence in the public councils damps every useful undertaking..." The concluding paragraph deserves to be quoted in full:

> But the most deplorable effect of all is that diminution of attachment and reverence which steals into the hearts of the people, towards a political system which betrays so many marks of infirmity, and disappoints so many of their flattering hopes. No government, any more than an individual, will long be respected without being truly respectable; without possessing a certain portion of order and stability.

Even a well trained bureaucracy, as it has existed in France since the days of Napoleon, cannot fill all the gaps left by an unstable government which emits too many of the sounds of an "uncertain trumpet." What the French call *immobilisme* invaded the entire body politic. That the upper echelons in the various ministries, those above the grade of *inspecteur*, were expected to cease working during a ministerial crisis, signified that one of the major functions of government, the innovative adjustment to new situations, was supposed to stop. The civil servants did not cease, of course, to ponder alternatives of action, and their influence on the, usually weak, governments formed after a crisis was substantial.

The overall result, however, did not measure up to the vital requirements of innovation. Years later, General de Gaulle was to denounce the results, in particular the hidebound conservatism which caused the French military bureaucracy to favor the Maginot Line: "Such a conception of war suited the spirit of the regime. Condemned by government weakness and political cleavages to stagnation, it was bound to espouse a static system of this kind."90/ Lack of innovation equally characterized the foreign policy of French interwar governments. "*Immobilisme*" marked economic policy as well, in particular during the world economic crisis. It made little difference that a man as farsighted as Paul Reynaud stigmatized both. The general atmosphere was such that no one really expected forward-looking action anywhere.91/

When we turn to modern day Italy, Denmark, The Netherlands, Belgium, and Ireland, it would suffice to list the cases in which the functioning of the EEC was affected by the absence of government which could speak authoritatively for these countries.

To be up to date, let us end with two other cases. First, in regard to what happened in Portugal at the end of 1982 and the beginning of 1983, a report quoted above 92/ contains these sentences:

> ...with the old caretaker government still in place, important business was going unattended. The 1983 austerity budget, which provided for hefty tax hikes, was withdrawn. With no budget there was no borrowing authority to float an annual loan of $650 million. Negotiations were stalled over other critical matters -- a request for a major International Monetary Fund loan, Portugal's entry into the European Economic Community, and the renewal of an agreement with the United States over military bases in the Azores.

The final case is that of the Federal Republic of Germany. Its Minister of Economics, Count Lambsdorf, referred repeatedly to the uncertainty caused by the events of 1982 and 1983 for the German investment climate. Meanwhile, the Western world waited with bated breath for the result of the March 6th elections, wondering whether the "Greens" would become the final arbiters of their country's foreign policy.

Insofar as Third World Nations are concerned, suffice it to mention that, in countries such as those of the British Commonwealth, including India and the East Indian states, where the parliamentary system was applied in its "classical" form,93/ democratic processes have survived to an extent which few critical observers expected at the end of the war. On the other hand, in some of the countries in which P.R. was applied, such as Indonesia94/ and Zaire, the first elections were the last free ones to be held. In Indonesia, at least, there is reason to assume that, under majority voting, the outcome of the crucial elections of 1955 might have been a good deal more constructive.95/

## Conclusions

The above considerations suggest three major conclusions. First: the claim that the parliamentary system is a "hair-trigger system" is based on the experience of countries with "improper channels of government," and the nature of these channels had been ascertained from the outset. Where they were avoided, reasonable stability was the rule, even under difficult circumstances.

Second: those who want constitutional reform in the United States greatly weaken their case if they do not distinguish between what made it possible for us to have a "Republic" which we can "keep," and those effects of divided powers which so often frustrate the best efforts of our nation and its leaders. We do not want to tear down what is good and solid, but it is now more imperative than ever to identify its parts and to explain its full significance.

This is the case because the lines of attack on the Madisonian interpretation of majority rule are reforming. Proponents of P.R. have always known that a frontal attack would not work. Therefore, they have tied up with other causes and, in the twenties and the thirties, it was municipal reform. They would not admit that boss- and machine-rule are aberrations within the American system96/ calling for intelligent and effective application rather than the abolition of majority voting. The Council Manager Plan97/ provided a simplified approach to the problems of rationality and efficiency, and hundreds of cities have used it to good effect in the natural combination with majority voting. For several decades, however, the official reform movement in this country was wedded to the view that reform could not be effective without P.R. The experience of city after city refuted it, but, when New York City was prevailed upon to adopt P.R., that system seemed to be riding "the wave of the future." Actually, New York's experience, as analyzed carefully in a series of editorials in The New York Times,98/ was to provide the signal for the abolition of that system, which now exists only in Cambridge, Massachusetts, where the results, while not alarming, are hardly spectacular.99/

In the 1970's and the 1980's, the renewed advocacy of P.R. has been associated with reapportionment. The British Boundary Commissions have demonstrated for decades that the problems of reapportionment can be solved fairly, and the procedures of an American equivalent could be streamlined. Let us recall, in any event, that, when the first serious American movement for P.R. began, its intellectual leaders expressed themselves frankly about its probable consequences. It was clearly implied that the conditions of the 1920's, when there were enough Progressives in the House of Representatives to prevent normal party control, might become the rule.100/ In that case, "the House of Representatives would become representative in fact as in name."101/ This sentence implies an antithesis between the concepts of representation and of integration.

Even a brief analysis of Madison's thought, and of the highlights of American party "alignment and realignment," should settle any doubts as to the importance which the traditional American form of majority voting has had in creating, and recreating, the degree of "e pluribus unum," of unity out of multiplicity, which we have enjoyed in spite of the fact that divided powers do counteract a great part of the results.

The third point to be made arises from President Reagan's eloquent call, made in his address to the British Parliament in 1982, for concerted efforts to make democracy a success wherever it has a chance. An intelligent American contribution would, so far as majority rule and its implementation are concerned, have to do no more than to preach what we have practiced with outstanding success for close to 200 years. Minor refinements in electoral systems102/ are, of course, always possible, and so are adjustments to local conditions, as long as these do not interfere with the "absolute necessity of system."

The utilization of our great opportunity cannot, however, be taken for granted. Too many trends in the contemporary social sciences, political science not excluded, militate against optimism. But why not implement now what Alexander Hamilton contemplated in the early 1800's? As one ot his biographers103/ reports, he:

> planned a great work of thought and scholarship. He unfolded this plan to his friend (Chancellor James) Kent, a visitor at the Grange, who described it as contemplating a "full investigation of the history and science of civil government, and the practical results of the various modifications of it upon the freedom and happiness of mankind." Hamilton wished "to have the subject treated in reference to past experience and upon the principles of Lord Bacon's inductive philosophy," and to engage the assistance of others in the enterprise.

A Hamiltonian approach to our problems would pay full attention to what Madison, his faithful collaborator in writing The Federalist, wrote on the means required to "break and control the violence of faction." A Hamiltonian approach to the problems of our day would also include a modern version of that integration of politics and economics which Hamilton suggested in his letter to James Duane (September 1780), the first statement of the principles which were to guide the movement for a new Constitution. A properly funded, and properly administered, scholarly enterprise could take care of all significant points of principle as well as of detail.

# FOOTNOTES

1/ The author has dealt with recent criticisms of the parliamentary system in his articles: "Electoral Systems and Political Systems: Recent Developments in Britain," Parliamentary Affairs (Winter 1976), and "The English Malady and English Political Thinking," Verfassung und Verfassungswirklichkeit - The Living Constitution (Berlin 1976).

2/ Introduction to the World's Classics ed. of Walter Bagehot, The English Constitution (Oxford 1928), p. x.

3/ The Republic (New York 1943), pp. 248-249.

4/ On the "Twilight Zone of Government" see Hermens, The Representative Republic (Notre Dame 1958), pp. 107 ff.

5/ Jay warned in The Federalist No. 64: "Although the absolute necessity of system in the conduct of any business is universally known and acknowledged, yet the high importance of it in national affairs has not yet sufficiently impressed the public mind."

6/ Hamilton said in his letter to Gouverneur Morris of May 10, 1797: "That instability is inherent in the nature of popular governments I think very disputable; unstable democracy, is an epithet frequently in the mouths of politicians; but I believe that from a strict examination of the matter -- from the records of history, it will be found that the fluctuations of governments in which the popular principle has borne a considerable sway, have proceeded from its being compounded with other principles; -- and from its being made to operate in an improper channel." (Henry Cabot Lodge, ed., Works of Alexander Hamilton, Vol. IX, p. 130.)

7/ The English Constitution, World's Classics ed., op. cit., pp. 221-222.

8/ Pp. 297-298.

9/ Behavioral research leads to meaningful results only if it is combined with theoretical analysis. A recent study on elections research shows how this can be done: Werner Kaltefleiter and Peter Nisson, Empirische Wahlforschung (Paderborn 1980).

10/ The State (Boston 1902), p. 221-222. On the different effects of plurality voting and the second ballot, see Maurice Duverger, Political Parties (New York and London 1954), pp. 239 ff.

11/ F. A. Hermens, Democracy or Anarchy? A Study of Proportional Representation, 2nd ed. (New York 1972), pp. 127-128.

12/ Hermens, *Democracy or Anarchy?*, *op*. *cit*., pp. 135-140.

13/ René Capitant, *La Réforme du Parlementarisme Français* (Paris 1934), p. 23.

14/ Hermens, *The Representative Republic*, *op*. *cit*., pp. 273-283.

15/ *The Representative Republic*, *op*. *cit*., pp. 279. The crisis had led to a vast amount of literature, some of which was excellent. See *The Representative Republic*, p. 539, and Notes 31-36, for particulars.

16/ "L'échec du parlementarisme 'rationalisé'," *Revue Internationale d'Histoire Politique et Constitutionnelle*, April-June 1954.

17/ These solid parts comprise the "Federal Union" and the "Representative Republic." The details have been dealt with in the chapters entitled "Constitutionalism and the Meaning of the Representative Republic," "Political Parties," "The Tyranny of the Majority," and "Representative Government Misrepresented: Vocational and Proportional Representation," in my book *The Representative Republic* (Notre Dame 1958). The volume is out of print, but these chapters are contained in the reprint of the first section, published under the title, *Introduction to Modern Politics* (Notre Dame 1959).

18/ *The Administrative Theories of Hamilton and Jefferson* (Chicago 1944), p. 20.

19/ The mature Beard reversed himself in his *The Republic* (New York 1943).

20/ "On the Debunking of History," *The Cleveland Plain Dealer*, October 3, 1940.

21/ See the chapter on "Constitutionalism and the Meaning of the Representative Republic" in my *The Representative Republic*, *op*. *cit*., pp. 144-148.

22/ *Dynamics of the Party System. Alignment and Realignment of Political Parties in the United States* (Washington, D.C., 1973).

23/ *The Representative Republic*, *op*. *cit*., pp. 182 ff.

24/ On the significance of this point, see Seymour Martin Lipset and Earl Raab, *The Politics of Unreason: Right-Wing Extremism in America, 1790-1970* (New York 1971), p. 3.

25/ "Historischer Mystizismus," *Das Neue Tagebuch* (Published in Paris), issue of February 16, 1935.

26/ Carl J. Friedrich is the author of the best available analysis of Bagehot's thought in this area, which he compares with that of John Stuart Mill. See his preface to F. A. Hermens, *Democracy or Anarchy? A Study of Proportional Representation*, *op*. *cit*., pp. xiii-xxx.

27/ The English Constitution, op. cit., pp. 137-138.

28/ Thomas Hare, The Election of Representatives, Parliamentary and Municipal, 4th ed. (London 1873), pp. xv, 26-27, and 140.

29/ For the details, see Cornelius O'Leary, "Ireland: The North and the South," in S. E. Finer, ed., Adversary Politics and Electoral Reform (London 1975), pp. 159 ff.

30/ A. Esmein and H. Nezard, Éléments de Droit Constitutionnel Francais et Comparé, Vol. I (Paris 1927), p. 348. See also Democracy or Anarchy?, op. cit., p. 9, footnote.

31/ Demokratie und Wahlrecht (Paderborn 1933), pp. 19 ff., Democracy or Anarchy?, op. cit., pp. 193-213 and 285-300.

32/ The author directed such studies while in charge of the University of Cologne's Research Institute for Political Science and European Questions. The following examples might be mentioned: Rudolf Wildenmann, Macht und Konsensus als Problem de Innen- und Aussenpolitik, 2nd ed. (Koeln und Opladen) 1967, Westdeutscher Verlag; Karl-Heinz Nassmacher, Das Oesterreichische Regierungssystem. Grosse Koalition oder alternierende Regierung (Koeln und Opladen) 1968, Westdeutscher Verlag; Paul Kevenhorster, Das Politische System Japans (Koeln und Opladen) 1969, Westdeutscher Verlag; Ernst-J Kerbusch, Das uruguayische Regierungssytem. Der Zweite Colegiado 1952-1967 (Koeln, Berlin, Bonn, Muenchen) 1971, Carl Heymanns Verlag; Klaus Schumann, Das Regierungssystem der Schweiz (Koeln) 1971, Carl Heymanns Verlag.

33/ Camera dei Deputati, Discussioni, Legislatura XXV, pp. 19736 ff.

34/ Ibid., pp. 19989/19990.

35/ Ibid., p. 19737.

36/ The Fascist Dictatorship in Italy (New York 1927), and "Lectures on Post-War Italy," given at Harvard University, mimeographed.

37/ The details are examined in two chapters of Democracy or Anarchy?, op. cit., pp. 147-213.

38/ Quoted from a speech made by Lord Craigavon in the Northern Irish Parliament on October 27, 1927, Government of Northern Ireland, Paliamentary Debates, House of Commons, Vol. 8, No. 36, p. 2275.

39/ Theodor Heuss, Friedrich Naumann (Stuttgart 1935), pp. 608 ff.

40/ Ibid., pp. 609/610.

41/ Neues Wahlrecht (Berlin 1929), pp. 148 ff.

42/ On the charge that, if defeated in elections, the Nazis could have won by extraparliamentary action, see *Democracy or Anarchy?*, *op*. *cit*., pp. 227-231.

43/ The best analysis of the interaction between various elements of the political structure in the collapse of the Weimar Republic remains Arnold Brecht, *Prelude to Silence* (New York 1944).

44/ Werner Kaltefleiter, *Wirtschaft und Politik in Deutschland*, 2nd ed. (Koeln-Oplanden 1968) has traced the relationship between the declining economy and the rise of both the Nazi and Communist vote in surprising detail.

45/ They were those used by Dr. Schauff for the elections of 1924 and 1928. For all details, see *Democracy or Anarchy?*, *op*. *cit*., pp. 257-272.

46/ This is one reason why the claim that the high percentage achieved by the Nazis in June 1932 (37.3 percent) would have given them control under majority voting. There simply would have been no such elections. Professor Helmut Unkelbach of the University of Bonn has, however, taken a closer look at the figures and reached the result that if, on a second ballot, those who had previously supported the Social Democrats and turned Communist at that time, had cast their votes for the Social Democrats wherever this was necessary to prevent the victory of a Nazi, the Republican parties would still have won. See his essay: "Ursachen des Zusammenbruchs der Weimarer Republik und ihre Lehren," in Ferdinand A. Hermens and Theodor Schieder (eds.), *Staat, Wirtschaft und Politik in der Weimarer Republic. Festschrift fuer Heinrich Bruening* (Berlin 1967), pp. 421-423. Unkelbach also emphasized that, in the same year, there was one election which demonstrated that the moderate voters were quick to utilize the dynamics of majority voting: when von Hindenburg ran for reelection as President, he beat his opponent Hitler hands down; Hindenburg had, in the second ballot, 53 percent of the votes, Hitler 36.8, and the Communist candidate Thaelmann 10.2 percent.

47/ Rudolf Smend, *Die Verschiebung der konstitutionellen Ordnung durch die Verhaeltniswahl*, first published in 1918, here quoted from Smend's *Staatsrechtliche Abhandlungen und andere Aufsaetze* (Berlin 1955).

48/ For details see: Agnes Morley-Headlam, *The New Democratic Constitutions of Europe* (London 1928); Arnold Zurcher, "Democracy's Declining Capacity to Govern," *Western Political Quarterly*, December 1955; R. J. Buell, *Poland: Key to Europe* (New York 1939): R. Machray, *Poland 1914-1932* (New York 1932); George von Rauch, *The Baltic States: The Years of Independence 1917-1940* (London 1974); J. Chmelar, *Political Parties in Czechoslovakia* (Prague 1936). On Ireland see James Hogan, *Election and Representation* (Cork 1945); Cornelius O'Leary, *The Irish Republic and its Experiment with Proportional Representation* (Notre Dame 1961); F. A. Hermens, *Democracy or*

Anarchy?, op. cit., pp. 311 ff.; F. A. Hermens, Europe between Democracy and Anarchy (Notre Dame 1951), pp. 99 ff.

49/ The former Minister of the Interior, Jean Mistler, had presented an extensive report on the probable consequences of P.R.: "Rapport Fait au Nom de la Commission du Suffrage Universel," Chambre des Deputes, No. 6326, Session de 1936.

50/ "Le Pouvoir Exécutif et le Pouvoir Législatif," La Republique Française (published in New York) December 1943.

51/ L'Annee Politique, 1944-1945 (Paris 1946), p. 293. This publication also contains details on election laws.

52/ This was largely due to Ramsay MacDonald's Socialism and Government (London 1909).

53/ Palmiro Togliatti spoke for all of the parties of the Third International when he gave the reasons for the Communist advocacy of P.R., in his article "On the Possibility of Using the Parliamentary Path for the Transition to Socialism," Pravda, March 8, 1956. He was afraid of a virtual extinction of the Communist party under majority voting, a result which in countries like Italy and France could have been expected only in the long run.

54/ The author would not characterize their attitude in such terms had it not been explained to him that way by one of the most respected leaders of the MRP.

55/ George Cogniot, in an article published early in 1944 in the -- then clandestine -- Cahiers du Communisme (No. 20, pp. 42-51) had, in the name of his party, torpedoed the plan for a new constitution prepared by Michel Debré for the Council of Resistance. This draft anticipated much of what Debré was eventually able to get into the constitution of the Fifth Republic. Cogniot was for a weak Republic in which, it was assumed, a strong Communist party, made possible by P.R., would dominate.

56/ Peter Campbell, "Remarques sur la loi électorale française du 9 May 1951," Revue Française de Science Politique, October-December 1951.

57/ He traced his reasons in Ma part de vérité (Paris 1969). See, for example, pp. 36 ff.

58/ In accordance with our brief terminological discussion (above, p. 4), the term "tendency" seems preferable to that of "law." Maurice Duverger, Political Parties (London and New York 1954), p. 217, uses the term "true sociological law" but does so with great caution which William H. Riker underlines: "The Two-Party System and Duverger's Law: An Essay in the History of Political Science," American Political Science Review, December 1982.

59/ In his Ma Part de Verite (Paris 1969), he does not use the term "dominate" but Le Monde does so quite properly in tracing his strategy: "L'Election Presidentielle 26-avril - 10 mai 1981 (Paris 1981), pp. 148-149.

60/ Bernard Owen, "Remarques sur les Modes de Scrutin et L'Evolution Electorale du Parti Socialists sous la Cinquieme Republique." (mimeo. 1981).

61/ Jean-Luc Parodi used this term in his article, "L'echec des gauches," Revue Politique et Parlementaire, No. 873, commenting on the parliamentary elections of 1978.

62/ The Representative Republic, op. cit., pp. 313 ff.

63/ Only those who run in the first ballot can run in the second, and only if they have obtained 12.5 percent of the registered voters. The result comes close to run-off elections which limit the second ballot to the two leading contenders.

64/ The effects of the present system are mitigated by the institution of suppleants, alternates to the deputies who are elected together with them and who succeed them when the former become ministers. It is customary, though not legally required, that, when a minister loses his job, the suppleant resigns, giving the former minister a chance to run again for his old job -- a cumbersome and not always successful arrangement.

65/ Werner Kaltefleiter, Die Funkticnen des Staatsoberhauptens in der parlamentarischen Demokratie (Cologne and Opladen 1970), 148 ff.

66/ These and other aspects of the Fifth Republic are fully treated in Maurice Duverger, La Republique des Citoyens (Paris 1982). The book was not yet available to the author, but its contents were dealt with a review article by Rene Remond, "Le Peuple et la Republique," Le Monde, December 10, 1982.

67/ Evanston and White Plains, N.Y., 1958.

68/ In the American zone of occupation, the Weimar type of P.R. (with all deputies to be elected on party lists) was reestablished, but eventually, after German influence became stronger, all changed to the English pattern.

69/ Preface to F. A. Hermens, Demokratie oder Anarchie? (Frankfurt 1951), p. vii.

70/ The lag between reality and perception is discussed in Werner Kaltefleiter, Wirtschaft und Politik in Deutschland. Konjunktur als Bestimmungsfaktor des Parteiensystems, 2nd ed. (Cologne and Opladen 1968), pp. 108 ff.

71/ Other less visible, but no less significant and hardly "constructive" results of that institution have been dealt with in: Juergen Domes, "Regierungskrisen in Bund und Laendern seit

1949 und die Funktion des konstruktiven Mistrauensvotums" in Peter Haungs (ed.) Res Publica (Munich 1977).

72/ The author, who was a member of the "Advisory Council on Questions of Electoral Reform," established by the Ministry of the Interior, dealt with details in his article, "Sicherung, Ausbau und Verankerung des parlamentarischen Systems in der Bundesrepublik," Verfassung und Verfassungswirklichkeit, 1972, Part I, particularly pp. 41-50. Rudolf Wildenmann, "Wahlsystems und Demokratie - Eine Zwischenbilanz," in Rudolf Wildenmann (ed.) Form und Erfahrung (Berlin 1976), pp. 223 ff., takes up some fundamental aspects of the matter.

73/ Robert Redslob, Der Parlamentarismus in seiner wahren und seiner unechten Form (Tuebingen 1918).

74/ "Significato del voto Secreto," Il Giornale d'Italia, April 23, 1954.

75/ "Toward an Overall Western Strategy," Fall 1982.

76/ One of his colleagues in the leadership of the SPD, Professor Friedrich Schaefer, set forth the essentials of such a system as against the conditions of the time, in his article "Ist die Zeit reif fuer ein funktionsgerechtes Wahlrecht?," Verfassung und Verfassungswirklichkeit (Cologne and Opladen 1968), Part II.

77/ Here quoted from the English version, published in The German Tribune of January 2, 1983.

78/ When the Christian Democrats felt quite certain of an absolute majority in the Hesse elections of September public opinion polls supported them. So did the result of the postal ballots which had been cast about a week before the elections. In the end, the Christian Democrats won 52 seats, the Social Democrats 49, and the Greens 9.

79/ Tempo, October 17, 1945.

80/ Published separately under the title, "Contro La Proporzionale," (Rome 1946).

81/ F. A. Hermens, Europe between Democracy and Anarchy (Notre Dame 1951), pp. 160-161.

82/ Hermens, The Representative Republic, op. cit., pp. 413 ff.

83/ Sergio Ortino, "Proporz und Staatskrise in Italien," Verfassung und Verfassungswirklichkeit (Cologne-Opladen 1969), p. 84.

84/ Some observers did, however, point to the absence of a number of Socialist deputies from the crucial vote.

85/ "La salutare campagna di agosto: il discorso di Craxi nel dibattito sulla fiducia." Avanti!, issue of September 1, 1982.

86/ Proporz und Staatskrise in Italien, op. cit., p. 103, Note 36.

87/ John Darnton, "Lisbon Lurches through 15th Government Crisis," The New York Times, December 23, 1982.

88/ The Politics of Accommodation (Berkeley 1968).

89/ Democracy in Plural Societies (New Haven 1977).

90/ Charles de Gaulle, War Memoirs: The Call to Honour, 1940-42 (New York 1955), p. 5.

91/ For some details, see my The Representative Republic, op. cit., pp. 270-273; F. A. Hermens, Der Staat und die Weltwirtschaftskrise (Vienna 1936), pp. 211 ff.

92/ John Darnton, "Lisbon Lurches through 15th Governmental Crisis," op. cit.

93/ For Trinidad and Tobago the then Prime Minister, Dr. Eric Williams, stated the reasons succinctly when a Republican Constitution was about to be adopted. See his article, "Proportional Representation in Trinidad and Tobago," The Round Table, April 1973. When, in 1976, the new Constitution was adopted it explicitly called for the plurality system of voting.

94/ The Representative Republic, op. cit., pp. 478 ff.

95/ See Axel Ridder, "Wahlen und ausserparlamentarische Machtbildung in Indonesien" in Verfassung und Verfassungswirklichkeit, 1967.

96/ F. A. Hermens, "Exit the Boss," The Review of Politics, October 1940.

97/ Henry Hazlitt, A New Constitution Now (New York 1941) pointed to the fact that the Council Manager Plan represents an adaptation of the principles of the parliamentary system to city government.

98/ The editorials on "The Record on P.R." were published in the issues of October 27, 28, 29, 30, and December 5 and 6, 1947. For text, see appendix.

99/ After the 1956 elections, the new Council needed more than a thousand ballots to elect a mayor. With a city manager in place that did not matter very much, but imagine what such an outcome would mean if a national government had to be formed.

100/ As mentioned above, Thomas Hare, who wanted to make one constituency of all of England, went farther in describing the probable results of his system, which in his words "will dissolve the present majorities."

101/ C. G. Hoag and G. H. Hallett, Jr., Proportional Representation (New York 1926), p. 117.

102/ On measures to make sure that the strongest party also has the most seats, and to provide for an opposition of adequate strength, see my "Electoral Systems and Political Systems. Recent British Experience," *Parliamentary Affairs*, Winter 1976.

103/ Ralph Edward Bailey, *An American Colossus. The Singular Career of Alexander Hamilton* (Boston 1933), pp. 287-288.

## APPENDIX

## EDITORIALS FROM THE NEW YORK TIMES ON PROPORTIONAL REPRESENTATION

| | | | |
|---|---|---|---|
| 1) | The Record on P.R. I | October 27, 1947 | p. 1 |
| 2) | The Record on P.R. II | October 28, 1947 | p. 3 |
| 3) | The Record on P.R. III | October 29, 1947 | p. 4 |
| 4) | The Record on P.R. IV | October 30, 1947 | p. 5 |
| 5) | P.R. is Repealed | November 5, 1947 | p. 6 |
| 6) | The Results of P.R. | November 6, 1947 | p. 7 |

Dr. Hermens, Pol. Science.

N.Y. Times, Mon. Oct. 27, 1947.

## THE RECORD ON PR-1

On Nov. 3, 1936, the people of New York City voted a new Charter replacing the 65 member Board of Aldermen with a much smaller City Council and, on a separate question, set up a system of Proportional Representation voting by boroughs to elect the members of that Council. The vote on PR was 923,186 for to 555,217 against. This newspaper on the morning of the election in an editorial of "last-minute reminders" said: "If you wish to plump for a somewhat doubtful experiment with Proportional Representation, in a limited field, vote 'yes' on Question 2 Local". In November, 1937, the first new Council was elected. The city has thus had a full ten-year test of PR. We believe, for a number of reasons which we shall set forth in this and later editorials, that this "somehwat doubtful experiment" should be concluded as soon as possible. A proposal before the voters in referendum on November 4 will provide the opportunity to abolish PR.

In making known on this page in early April, 1947, our decision to support repeal of PR we were, of course, aware that we had in the earlier years of this experiment endorsed the workings of Proportional Representation and defended it against critics. PR seemed for a time to be accomplishing at least some of the hopes of its advocates. But we began as early as 1941 to point out the evidence of short-comings in PR, and have continued to do so steadily since, as it became constantly clearer that the system, no matter how attractive as theory, was defective in practice.

We favor repeal of PR for these reasons, and others:

1. It has failed to produce a City Council that fairly represented the sentiments of the people, notably so in the La Guardia regime when Fusion was in control of the city administration, but Tammany continued to dominate the Council.

2. It has fostered the growth of splinter parties, seating Communists and other radicals who could not, by normal majority and district voting methods, have hoped to become members and giving them an official sounding-board for views shared by only a meager fraction in the electorate.

3. Early assumptions that the electorate would, with practice and education, learn to use intelligently and effectively the complicated voting system of PR have proved ill-founded. After education campaigns and the experience of four previous elections, one voter in every four in the fifth election using PR either left his ballot blank, made it invalid through wrong marking or made his voice ineffective through failure to indicate a sufficient number of alternative choices. Thus 24.2 per cent of all ballots were ineffective for one reason or another in 1945. The Democratic machine has learned to use the PR ballot adroitly, and the Communists and others have become skilled in "bullet" voting, but the independent voters and, to a considerable extent, the Republicans have not been able to make their voice felt to a degree commensurate with their numbers.

4. Borough-wide election of Council members as provided under PR makes it impossible, in the great majority of cases, for the citizen to know the qualifications of the candidate he is voting for. The great expense of a campaign that would enable a candidate (for an office paying $5,000 a year) to make his views known to several million residents in a whole borough is in itself an insuperable obstacle. To make his ballot effective, as the PR ideal calls for, a voter must mark a long list of preferences in their order. He can know well one or two of these candidates, perhaps, and the balance of his choices is random, unintelligent voting, too often done on merely racial, religious or indiscriminate party basis.

The Record on PR-I (Continued)

5. Recount on a challenged contest is so costly that expense alone stands in the way of sincere challenge, since the candidate himself must bear the cost.

6. The neighborhood is no longer represented in our city legislature, and the return to a district form of voting could encourage legitimate attention to local interests needed for fair play and balanced development of the city. Under PR all the Council members from a borough could come from one block in that borough; it has, in fact, happened at times under PR that whole large sections of the city have had no spokesman in the Council. It is not here suggested that a return to an aldermanic type of log-rolling for the benefit of home districts would be desirable. But district representation does have an advantage in bringing to a legislature that specialized knowledge of local conditions that is one basis of good government.

7. The record of the Councils we have elected under PR, and the qualities of some of the members most in the public eye in recent years, are in themselves a major disappointment, tend to shake confidence in the democratic process and are a valid argument against keeping PR. The Council's over-all record as a lawmaker has been undistinguished to say the least, even when allowance is made for the limits placed on its powers. Its long and costly delay on county offices reform in its early years, its displays of political horseplay, its silly excursions into national and international affairs over which it had no jurisdiction, its conspicuous failure to take the lead, at least as a moral force, on such major matters as fare reform on city transit while occupying itself with such trivialities as the return of bingo and the name of Sixth Avenue -- these are a few of the symptoms of a body whose delays, antics and childishness have been criticized by the very civic elements that were the most ardent supporters of PR.

We shall discuss these and other points further in the days before election.

## THE RECORD ON PR - II

Five elections of the City Council have been held since adoption of Proportional Representation, and the results of those elections constitute a convincing reason for repealing the PR system. They demonstrate a failure of the City Council by its composition to reflect the will of the people, most conspicuously while Fusion forces were electing a Mayor and a majority in the Board of Estimate; they show radical representation in the Council entirely inconsistent with the real weight of radical views in the electorate. Candidates were elected from 1937 to 1945 as follows:

1937: Regular Democrats, 14; Independent Democrat, 1; Republicans, 3; American Labor Party, 6; City Fusion, 2. Thus democrats had fifteen members of a twenty-six member Council, elected on the same day that the late Mayor La Guardia, running on the American Labor Party ticket and the candidate also of the Republicans, Fusionists and Progressives, was swept into office again with a vot of 1, 344, 630 to 891, 255.

1939: Democrats, 14, Republicans, 2; American Labor Party, 2; Fusion, 2; Independent (Alfred E.Smith,Jr.), 1. This time the Democrats had won a two-thirds majority, or enough to override a La Guardia veto, in a Council of twenty-one.

1941: Democrats, 17 (one short of two-thirds to override veto); Republicans, 2; American Labor, 2; American Labor-Fusion, 1; Fusion, 2; right-wing Laborite, 1; Communist (Peter V.Cacchione), 1. There were twenty-six members of the Council.

1943: Democrats, 10; Republics (regular), 1; Republican independents, 2; Communists (Benjamin J.Davis,Jr., and Mr.Cacchione), 2; Independent (Michael J.Quill), 1; American Labor Party, 1, for a total of seventeen members.

1945: Democrats, 14; Republicans, 3; Liberals, 2; American Labor, 2; Communists, 2. This Council of Twenty-three members, elected for a four-year term for the first time contained such members as Mr. Cacchione, Mr. David, Eugene P. Connolly, and again Mr. Quill. That men of their political complexion should actually outnumber the Republicans in the Council and win almost a third as many seats as the strongly entrenched Democratic machine in New York City is an absurdity that calls for correction.

Of the election in 1937 Mayor La Guardia said: "Had there been no Proportional Representation vote, I could have carried an overwhelming majority in the City Council." PR rode in on the crest of a "reform" government, following the Seabury disclosures, and represented for many voters something tangible -- even if they couldn't fully understand it -- that might deal a blow to Tammany. This same desire for reform has provided most of the momentum in the few other cities in the United States where PR has been accepted and where it has usually been coupled with initiation of a city manager plan of government. But, worthy as the purpose was, the resulting City Council through the years has not been representative and its members -- with a few notable exceptions -- have been undistinguished. Some of them, whose views we regard as un-American, we stand a fair change to get rid of by repealing PR.

## THE RECORD ON PR - III

One of the fallacious arguments used in defense of Proportional Representation is to summon up the prospect that we shall be returning to the "old Board of Aldermen composed of sixty-four Tammany Democrats and Joe Baldwin". That is not the case. The new system of electing the City Council ignores the old districts, and bases the election on the State Senate districts established by the Legislature. There are twenty-five of these in the city, and twelve of these Senate seats are now held by Republicans or Republican-American Laborites. It does not necessarily follow that the same party division would exist in a newly elected Council that exists in the New York City delegation to the Senate, but it seems a safe assumption that Republicans would be far better represented in the Council than they now are.

The boroughs are represented in the state Senate, under the election of November 5, 1946, as follows: Queens -- Republicans, 4; Kings County (Brooklyn) -- Republican, 1; Republican-American Labor, 3; Democrats, 2; Democrat-Liberal, 1; Democrat-American Labor, 1; Democrat-American Labor-Liberal, 1 (total, 9 seats); Richmond -- Republican, 1; New York County (Manhattan) -- Republican, 1; Democrat, 1; Democrat-American Labor, 3; Democrat-American Labor-Liberal, 1 (total seats, 6); Bronx -- Democrat, 3; Republican, 2 (total seats, 5).

In the State Senate delegation from New York City the parties are represented as follows: Republicans, 9; Republican-American Labor, 3; Democrats, 6; Democrat-American Labor, 4; Democrat-Liberal, 1; Democrat-American Labor-Liberal, 2.

The 1945 election produced a City Council of twenty-three members, divided as follows: Democrats, 14; Republicans, 3; Liberals, 2; American Labor, 2; Communists, 2.

Whatever the reason for it, it cannot be convincingly argued that the Republicans are fairly represented with three members in this Council of 23, or that Communists deserve two-thirds as many seats as Republicans. In the election of November, 1946, for state offices the Communists were running their own candidates for State Controller and Attorney General. The Communist vote for Benjamin J.Davis for Attorney General was 95,798, for Robert Thompson for State Controller, 85,098. The Communists estimated that something more than 5,000 of these votes came from outside the city.

So Communists, able to muster only about 90,000 votes in 1946 within the city at a major state election that brought out nearly 5,000,000 votes for Dewey and Mead, the candidates for Governor, were able in the 1945 City Council election here to elect 8.7 per cent of the Council membership. In the 1945 election for Mayor of New York City, 1,974,672 votes were cast by all parties. If the Communist vote for state offices in 1946 is set down beside this Mayoral total it makes 4.5 per cent of the vote as against a representation of 8.7 per cent of Communist members in the Council. The reasons for this discrepancy are, of course, the well-drilled technique of the Communists in PR voting, their deals with other radical elements for second and later choices on the ballots, and the apathy of so many voters of other parties toward PR election of the Council.

All these facts contribute to our conviction that PR should be repealed, and that an election of the City Council by State Senate districts carries little danger of a return to the old Aldermanic abuses.

## THE RECORD ON PR - IV

One of the most serious objections to the Proportional Representation system of electing our City Council is that it fragmentizes the electorate into a number of splinter parties or independent candidacies based on shades of political opinion, racial loyalties, isms, or religious grounds. This is illustrated by the last Council election, in 1945, which seated fourteen Democrats, three Republicans, two Liberals, two Liberals, two American Laborites and two Communists. It is illustrated even more forcibly by a study of the full list of candidates in the five boroughs, which included -- in addition to the parties above -- Citizens Non-Partisan, City Fusion, Socialist, Trotskyist, American Veterans, Independent Citizens Committee and, in addition to these, no fewer than twenty-seven individuals running under no party designation.

In warning the voters against accepting PR in 1936 the late Alfred E.Smith said: "I believe that the whole theory of representing every minority on the city legislative body is wrong. I realize that it has great charm for those who want to break down the larger parties, encourage minorities and substitute free-for-all oratory and wrangling for orderly government.****** Party government as applied to municipal elections is a long way from perfect, but abolishing party government in favor of minority crackpot candidacies is going to be infinitely more irresponsible, especially when it is coupled with destruction of local district representation."

The extent to which fragmentation of the electorate occurred in that first PR election has been analyzed by Professor F.A.Hermens of Notre Dame University, one of the foremost students of PR. Using a table compiled by a State Constitutional Convention Committee appointed by Governor Lehman, he notes that on first choice votes for Council there was the following division of ballots: Democratic, 31 per cent; American Labor, 12 per cent; City Fusion, 11 per cent; Republican, 9 per cent; Insurgent Democrats, 5 per cent; Communists, 4 per cent; Socialists, 1 per cent, and "others" (independents), 27 per cent. This is fragmentation indeed.

"It was the same day," says Professor Hermens, "that Mayor La Guardia (who had been elected by a mere plurality in 1933) polled almost 60 per cent of the total vote cast in the city, the same day that Thomas E. Dewey was elected District Attorney of Tammany's own Borough of Manhattan with a majority of landslide proportions, and that Fusion elected, in addition to all the other members of the Board of Estimate, four of the five Borough Presidents of New York.******** When the results were known, the voters came to realize that the PR Council was the one point at which the Fusion landslide had been stopped."

The results in Council were, in members elected in a 26-member body, Democrats 50 per cent; American Labor 19 per cent; City Fusion 11½; Republicans 11½, and Insurgent Democrats 8 per cent. The lesson is that reform elements in the electorate, forgetting their differences and uniting their strength under the old-fashioned plurality system of voting, were able to keep their Fusionist Mayor in office by an increasingly substantial margin. Under PR their strength was dispersed and fragmentized into splinter parties and independent candidacies, with a result that Democrats won half the Council seats and four other groups divided up the remaining thirteen. In four other elections held under PR while Mr.LaGuardia was Mayor the Democrats never failed to win control of the Council, and once had the two-thirds needed to override a Mayoral veto.

11/5/47

# PR IS REPEALED

We believe the cause of sound government has been served in the passage of Proposition IV, by which New York City voters yesterday rejected the Proportional Representation system of electing the City Council.

PR had a full ten-year test. It did not live up to expectations. The Councils so elected did not truly reflect the political sentiment of the people. Democrats continued to dominate the Council at the same time that Fusion was electing and re-electing Mayor La Guardia, foe of Tammany. Republican membership was confined to a smattering entirely inconsistent with the party's known strength among the electorate. Communists and other radicals won seats far beyond their just due because they had learned how to use PR and make deals to serve their ends.

The early hope that the electorate as a whole would finally become skilled in use of the ballot proved unjustified. The result finally was a Council splinterized as to parties, a sounding board for strange beliefs, a debating society given over to special pleaders and adoption of resolutions on national and international matters plainly outside the provice of a local legislative body. With a few exceptions the members have been undistinguished. District representation was gone, under borough-wide election, and the electorate could not hope to know more than one or two of the candidates for whom they were voting. PR as a theory sounded good in some ways. The practical results in five elections so held were disappointing.

Now an entirely new system has been voted in, not returning to the old 65-member Board of Aldermen, but setting up a Council of twenty-five members elected on a neighborhood representation basis from State Senate districts. Those who supported repeal of PR in the interest of good local government have the further duty now to see to it that the new system actually brings good government. We invite all those forces, including many respected civic leaders, who supported PR in their sincere belief that it meant better government, to work with equal zeal now in the new effort to produce a better City Council. The Democrats have had sufficient warning in recent years to know that an aroused electorate, vigorously led, can turn them out of office in elections held on the old-fashioned majority basis, and keep them out for years, for failing to behave in the people's interest. That interest requires able men and women, and not party hacks, as nominees for the Council.

For the Republicans the repel of PR means an opportunity and a challenge. Twelve seats in the city's delegation to the State Senate are now held by Republicans or Replublican-American Laborites, as gainst six regular Democrats and others with bi-party endorsement. If the Republicans will put up strong candidates for the Council and then take the trouble to see that Republican voters go to the polls they can insure a Council that at very least has a healthy and effective Republican minority.

## THE RESULTS ON PR

A study of the vote by which New York City repealed the Proportional Representation system of electing its City Council reveals some interesting points, especially when a comparison is made with the tests of other years on this same issue.

The sweep against PR went through all five boroughs, and through all but fifteen of sixty-seven Assembly districts. In the city as a whole PR won a little over 38 per cent of the vote cast, a very slender showing when it is considered that most Presidential elections are won on a swing of a few percentage points. PR was voted into effect in 1936 with 62 per cent of the votes cast, sustained in 1938 with 68 per cent, and again in 1940 with 58 per cent. The extent of disillusion of the voters with the results of PR seems to have been emphatically demonstrated.

An analysis of the registered electorate who went to the polls on this issue through the years is also significant. In 1936, 2,900,184 were registered to vote in New York City, in 1938, 2,423,976, in 1940 (a Presidential year) 3,390,460, and in 1947, 2,336,248, a huge registration for an off-year. In spite of the bad weather, 64 per cent of the registered voters took a position on PR day before yesterday, as against only 50 per cent in 1936, 46 per cent in 1938 (when there were 1,184,259 blank and void votes) and 40 per cent in 1940. This impressively large percentage of registrants who not only took the trouble to visit the polls on a rainy day but also cast their vote on the PR issue is evidence of how deep the feeling was. Those voicing an opinion on PR passed even the number of total voters in the city on the housing propositions, and came within about 60,000 of equaling the total vote on the veterans' bonus.

Three other cities that have used PR also voted Tuesday on its retention. Boulder, Colorado, which had it for thirty years, discarded the system by a vote of nearly three to one. Long Beach, N.Y., abandoned it, and the closeness of the vote in Cincinnati, where it won out, showed the substantial distrust of the system there.

We do not believe that the distrust so strongly registered in New York City will be lessened if a new test on the question is proposed next year.

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